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ARIZONA CORPORATION COMMISSION RECEIVED

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AZ CORP COMMISSION
DOCKET CONTROL

DATE: NOVEMBER 23, 2015

DOCKET NO.: W-03514A-12-0008

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah Harpring. The recommendation has been filed in the form of an Opinion and Order on:

J. STEPHEN GEHRING, BOBBY JONES, AND LOIS JONES VS.
PAYSON WATER CO., INC./BROOKE UTILITIES, INC.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 2, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:


DECEMBER 8, 2015 AND DECEMBER 9, 2015

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

NOV 23 2015


JODI JERICH
EXECUTIVE DIRECTOR

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1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SBernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

8 J. STEPHEN GEHRING, BOBBY JONES, AND
9 LOIS JONES,

10 COMPLAINANTS,

11 VS.

12 PAYSON WATER CO., INC./BROOKE
13 UTILITIES, INC.,

14 RESPONDENT.

DOCKET NO. W-03514A-12-0008

DECISION NO. _____

OPINION AND ORDER

15 DATE OF HEARING: June 26 and 27, 2012

16 PLACE OF HEARING: Phoenix, Arizona

17 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes¹

18 APPEARANCES: Mr. J. Stephen Gehring, Pro Se;

19 Mr. Bobby Jones, Pro Se;

20 Ms. Lois Jones, Pro Se;

21 Mr. Robert T. Hardcastle, President, on behalf of
22 Brooke Utilities, Inc.; and

23 Ms. Robin Mitchell, Staff Attorney, Legal Division, on
24 behalf of the Utilities Division of the Arizona
25 Corporation Commission.

26 **BY THE COMMISSION:**

27 This case concerns a Formal Complaint ("Complaint") filed against Payson Water Co., Inc.
28 ("Payson") and Brooke Utilities, Inc. ("Brooke") by J. Stephen Gehring and Bobby and Lois Jones
(collectively "Complainants"), concerning water utility service provided by Payson in its Mesa del

¹ Chief Administrative Law Judge Dwight D. Nodes presided over all proceedings in this matter. The Recommended Opinion and Order was written by Administrative Law Judge Sarah N. Harpring.

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9 LOIS JONES,

DOCKET NO. W-03514A-12-0008

DECISION NO. _____

COMPLAINANTS,

VS.

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11 UTILITIES, INC.,

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OPINION AND ORDER

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15 APPEARANCES: Mr. J. Stephen Gehring, Pro Se;

16 Mr. Bobby Jones, Pro Se;

17 Ms. Lois Jones, Pro Se;

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26

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Opinion and Order was written by Administrative Law Judge Sarah N. Harpring.

1 Caballo System ("MDC").² The Complainants' allegations primarily relate to the implementation of
 2 a Water Augmentation Surcharge ("WAS") tariff and a revised Curtailment Plan Tariff ("Curtailment
 3 Tariff") authorized in Decision No. 71902 (September 28, 2010).³

4 DISCUSSION

5 I. BACKGROUND

6 Payson

7 Payson is an Arizona public service corporation engaged in providing water utility services to
 8 approximately 1,114 service connections through eight independent water systems in Gila County.
 9 (Decision No. 74175 (October 25, 2013) at 4-5.⁴) The eight systems are Geronimo Estates, Deer
 10 Creek, Meads Ranch, Whispering Pines, Flowing Springs, Gisela, East Verde Park, and MDC.
 11 (Decision No. 74567 (June 20, 2014) at 15.⁵) From 1996 through May 31, 2013, Payson was wholly
 12 owned by Brooke, which also owned other water utilities.⁶ (*Id.* at 14-15.) Robert Hardcastle served
 13 as President for both Payson and Brooke. (*Id.*) Since June 1, 2013, Payson has been owned by JW
 14 Water Holdings, LLC ("JW"), a Colorado LLC managed by Jason Williamson. (*Id.*) According to
 15 Mr. Williamson, Brooke and Mr. Hardcastle have no interest in and are no longer affiliated in any
 16 way with Payson. (*Id.* at 14.)

17 Mr. Gehring

18 Mr. Gehring operates the Houston Mesa General Store ("Store"), a small family-established
 19 business, the ownership of which was held in trust as of the hearing in this matter. (Tr. at 299-300.)
 20 The Store is located in Payson's MDC service area and is a customer of Payson for water utility
 21 services. (*Id.*) The Store is not organized as a separate legal entity, but instead is operated as Mr.
 22 Gehring's personal business (i.e., Steve Gehring dba Houston Mesa General Store). (*See* Tr. at 299-
 23 301.) At the time of the hearing in this matter, Mr. Gehring was involved in a group interested in
 24

25 ² Official notice is taken of the Complaint, filed in this matter on January 11, 2012, which was not offered as an exhibit
 at hearing.

26 ³ Official notice is taken of this Decision.

27 ⁴ Official notice is taken of this Decision.

28 ⁵ Official notice is taken of this Decision.

⁶ In Decision No. 60972 (June 19, 1998), seven Brooke subsidiaries were granted authority to transfer their assets and
 corresponding water utility CC&Ns to seven (mostly new) water companies, including Payson, for purposes of having the
 water company operations organized geographically. Official notice is taken of this Decision.

1 forming a "Mesa del Caballo Domestic Water Improvement District" to buy out Payson and take over
2 the provision of water utility services for MDC. (*See* Tr. at 305-08.)

3 Mr. Gehring worked as a paralegal from approximately 1988 until approximately 1999. (Tr.
4 at 294-95.) He holds an associate's degree in art and engineering, with a minor in math and physics,
5 from Northern Arizona University. (Tr. at 296-97.) He has not owned or operated a water utility and
6 does not have a water operator's certificate. (Tr. at 301.) He has, however, worked for a drilling
7 company. (Tr. at 303, 304.)

8 **Mr. and Mrs. Jones**

9 At the time of the hearing, Mr. and Mrs. Jones had lived in the MDC service area and had
10 been customers of Payson for a little more than three years. (Ex. C-12.) Mrs. Jones is the customer
11 according to the water service bills. (*See* Complaint at ex. A at 7-12.) Mr. and Mrs. Jones report
12 that, due to the location of their home at the main entrance to MDC, they are able to observe much of
13 the traffic coming into and leaving MDC. (Ex. C-12.) Mr. and Mrs. Jones also reported that a
14 member of the Commission's Utilities Division ("Staff") requested they combine their complaint
15 with Mr. Gehring's complaint because the two complaints were so similar. (*Id.*)

16 **Related Cases**

17 In Decision No. 67821, issued on May 5, 2005, in Docket No. W-03514A-04-0906
18 ("Curtailment Docket"),⁷ the Commission considered Payson's request for authority to implement a
19 Curtailment Tariff that was modeled after a tariff that had been approved for Pine Water Company,
20 Inc., another Brooke subsidiary. The Curtailment Tariff applied to all nine of Payson's systems. The
21 Curtailment Tariff included a provision for a "reconnection fee for violation" in the amount of
22 \$150.00 or more, depending on curtailment Stage and whether a first or subsequent offense. The
23 Curtailment Tariff was approved, with some amendments recommended by Staff. Additionally,
24 Payson was required to comply with the following recommendations:

25 14. Staff further recommends:

26 a. That the monies collected under this tariff shall be
27 deposited into a separate interest bearing trust account and
used solely for the purposes of paying for importing of

28 ⁷ Official notice is taken of this Decision.

water to the Company (such as hauling water or connecting to and buying water from another water system).

b. That the Company submit a report to the Utilities Division Compliance Section, beginning October 15, 2005, and on May 15 and October 15 of each year thereafter, that includes a running account of (up to the last day of the previous month) the following information; [sic]

- 1) The name of each customer that has paid the fine,
- 2) The amount of the fine paid by each customer,
- 3) The amount of money used from the account to pay for importing water, and
- 4) The balance in the account.⁸

This reporting requirement was also referenced in the Curtailment Tariff itself. (See Decision No. 67821 at ex. A at 6.)

In Decision No. 71902, issued in Docket Nos. W-03514A-10-0116 *et al.* ("WAS Docket"), the Commission considered Payson's requests for authority to implement a WAS/emergency rate tariff and a revised Curtailment Tariff for MDC. Payson based its requests on water shortages in MDC and the costs associated with hauling water to augment supply,⁹ as Payson asserted that it had incurred a cost of \$59,137 to haul water to MDC during the summer of 2009. Payson indicated that it could not continue to absorb the cost of water hauling for MDC. The Commission found that Payson had inadequate storage capacity and that the water production from its nine wells was poor, fluctuating between 19 and 59 gallons per minute ("gpm"), which was insufficient to serve MDC customers during the peak summer months, even when the wells were producing at maximum capacity. The Commission concluded that Payson was facing an "emergency" and authorized Payson to recover its water hauling expenses by means of a WAS based on the prior month's cost of hauling water and on each customer's water usage for the month,¹⁰ with the following conditions: (1) the WAS tariff could not be applied retroactively; (2) the WAS tariff would be interim, subject to refund, and effective only until permanent rate relief was granted by the Commission; (3) the WAS tariff

⁸ Decision No. 67821 at 3.

⁹ Payson was exploring alternative solutions to the MDC water shortage, including drilling a new deep well for MDC or connecting MDC to a future C.C. Cragin Reservoir ("Cragin") water pipeline that would be serving the Town of Payson's water system in the future.

¹⁰ The Decision found that Staff was unable to determine the financial impact of the WAS because each month's WAS would be based on actual customer water usage and the amount of water hauled.

1 would be effective only from May 1 through September 30 of any calendar year; (4) the WAS tariff
 2 would be effective only for MDC; and (5) the WAS tariff would solely cover documented expenses
 3 for hauling water to MDC. In addition, the Decision required Payson to file a revised rate schedule
 4 reflecting the WAS tariff within 30 days after the Decision; to mail its customers notice of the WAS
 5 tariff and its effective date, in a form approved by Staff, at least 15 days before implementation; to
 6 file a full rate case within 12 months after the effective date of the Decision; to file a financing
 7 application concurrently with the rate application if Payson believed debt would be needed to solve
 8 MDC's water shortage problem; and to post a bond in the form of a \$100 cashier's check. Payson
 9 was also authorized to implement a revised Curtailment Tariff for MDC, which was included as
 10 Exhibit A to the Decision. The WAS tariff was not attached to the Decision.¹¹ The revised
 11 Curtailment Tariff was, and it included the reporting requirement that originated with Decision No.
 12 67821. (See Decision No. 71902 at ex. A at 7.)

13 In Decision No. 72679 (November 17, 2011),¹² issued in the WAS Docket, the Commission
 14 extended Payson's deadline for filing a permanent rate application to March 30, 2012.

15 On January 10, 2012, in Docket No. W-03514A-12-0007 ("Smith Docket"), J. Alan Smith, a
 16 resident in the MDC service area, filed a Complaint against Payson/Brooke, including a number of
 17 allegations concerning implementation of Payson's Curtailment Tariff and the WAS tariff.

18 On November 1, 2012, Payson filed a second request for an extension of time, until May 1,
 19 2013. In Decision No. 73774 (March 21, 2013),¹³ issued in the WAS Docket, the Commission
 20 denied this request and ordered Payson to file its permanent rate application within 30 days.

21 On April 22, 2013, Payson filed a permanent rate application in Docket No. W-03514A-13-
 22 0111 ("Rates Docket").

23 On May 27, 2013, Payson filed, in Docket No. W-03514A-13-0142 ("Financing Docket"), an
 24 application requesting permission to incur debt and to encumber real property and utility plant as
 25 security for the debt, which was proposed to be a loan from the Water Infrastructure and Finance
 26 Authority of Arizona ("WIFA"), in an amount not to exceed \$1,238,000, for the purpose of funding

27 ¹¹ There is no Exhibit B to Decision No. 71902.

28 ¹² Official notice is taken of this Decision.

¹³ Official notice is taken of this Decision.

1 an interconnection between MDC and the Cragin pipeline.

2 Effective June 1, 2013, JW acquired Payson and several other utilities owned by Brooke.¹⁴

3 On August 26, 2013, the Rates Docket and Financing Docket were consolidated
4 (“Consolidated Dockets”). In September 2013, a bifurcated procedural schedule was adopted to
5 allow for expedited consideration of a portion of the requested WIFA financing authority—\$275,000
6 that would be used to fund the first phase of the interconnection, which was to run from the Town
7 water distribution system to MDC.

8 On October 25, 2013, in the Consolidated Dockets, the Commission issued Decision No.
9 74175,¹⁵ authorizing Payson to borrow up to \$275,000 from WIFA for the purpose of financing the
10 construction of a new water transmission line to connect MDC to the Town’s water system;
11 authorizing Payson to implement a WIFA loan surcharge mechanism for MDC; requiring Payson,
12 within 15 days of closing on the approved WIFA loan, to file an application for elimination of the
13 WAS tariff; and requiring Payson to provide its customers notice of the changes.

14 On May 22, 2014, in the Consolidated Dockets, in response to a Staff proposal, the
15 Commission issued Decision No. 74484,¹⁶ granting Payson’s request to cancel the WAS tariff for
16 MDC and authorizing Payson to implement an interim emergency purchased water adjustment
17 mechanism (“PWAM”) designed to allow Payson to pass through to customers the costs of water
18 obtained through the newly completed first phase of the Cragin pipeline.¹⁷

19 On June 20, 2014, in the Consolidated Dockets, the Commission issued Decision No. 74567,
20 approving permanent rates and charges for Payson and, *inter alia*, making permanent the debt
21 surcharge and PWAM previously approved for MDC in Decision No. 74484.

22 On January 15 and 30, 2015, after eight procedural conferences and numerous filings, many
23

24 ¹⁴ Mr. Williamson has testified that neither Brooke nor Mr. Hardcastle have any interest in Payson, that Mr. Williamson
25 does not have an ongoing business or personal relationship with Mr. Hardcastle, and that Mr. Hardcastle is no longer
26 affiliated with Payson in any capacity. (Decision No. 74567 (June 20, 2014) at 14.) Official notice is taken of this
27 Decision.

28 ¹⁵ Official notice is taken of this Decision.

¹⁶ Official notice is taken of this Decision.

¹⁷ The Commission concluded that without a Commission-authorized PWAM, Payson would not be able to recover the
costs of water purchased from the Town and transported to MDC through the new pipeline because Payson had
previously been authorized to pass through only the water augmentation costs associated with hauling purchased water to
MDC.

related to persistent discovery disputes, an evidentiary hearing was held in the Smith Docket. At the evidentiary hearing, Mr. Smith appeared pro se, Payson appeared through Mr. Williamson, and Staff appeared through counsel. Mr. Smith presented documentary evidence and called as witnesses LaRon Garrett, Assistant Town Manager and Public Works Director for the Town of Payson; Mr. Williamson; Mr. Gehring; and himself. Staff presented documentary evidence and called as its witness Darron Carlson, Public Utilities Analyst Manager in Staff's Financial and Regulatory Analysis Section. Payson did not present documentary evidence or call any witnesses. The evidentiary record in the Smith Docket includes extensive documentation and testimony related to the Complaint in this matter. To ensure that the Commission uses the most thorough and robust evidentiary record possible in its consideration of the Complaint in this matter, we hereby take official notice of the entire evidentiary record in the Smith Docket.¹⁸ We note that the entire evidentiary record from this matter was also officially noticed in the Smith Docket.

II. PROCEDURAL HISTORY

On January 11, 2012, Complainants filed a Complaint against Payson and Brooke (collectively "Payson/Brooke"), alleging, *inter alia*, that, during the period from May 1, 2011, through October 30, 2011, Payson/Brooke had acted both negligently and fraudulently in its billing of MDC customers under the WAS tariff approved in Decision No. 71902. Complainants alleged that Payson/Brooke's actions violated specific Commission statutes and rules as well as Decision No. 71902 and requested multiple forms of relief.

On January 12, 2012, the Commission's Docket Control Center sent a copy of the Formal Complaint to Payson, by Certified Mail.

On January 30, 2012, Payson filed an Answer to the Complaint, including a Motion to Dismiss. Payson included a copy of an emailed response to Mr. Gehring's earlier informal complaint regarding the WAS, which had been submitted to the Commission on August 29, 2011.

On February 13, 2012, Complainants filed a Reply to Payson's Answer and Motion to Dismiss, asserting that Payson's failure or refusal to answer the Complaint constituted an admission

¹⁸ Evidence from the Smith Docket will be cited as "Smith Ex. X" and "Smith Tr."

1 of the allegations in the Complaint and, further, that Payson had failed to support its Motion to
2 Dismiss.

3 On February 23, 2012, a Procedural Order was issued scheduling a procedural conference for
4 March 9, 2012.

5 On March 9, 2012, the procedural conference was held as scheduled, with each of the
6 Complainants appearing pro se; Payson appearing through Mr. Hardcastle;¹⁹ and Staff appearing
7 through counsel. At the conclusion of the procedural conference, the Complainants, Payson, and
8 Staff were directed to make a filing providing mutually acceptable dates for the filing of testimony
9 and an evidentiary hearing.

10 On March 12, 2012, Staff filed a Joint Proposed Procedural Schedule including proposed
11 deadlines for direct and responsive testimony and a proposed June 26, 2012, date for the hearing to
12 commence.

13 On March 19, 2012, a Procedural Order was issued scheduling a hearing to commence on
14 June 26, 2012; establishing the proposed testimony filing dates; and establishing other procedural
15 requirements and deadlines.²⁰

16 On March 21, 2012, Payson separately filed (1) a Motion to Delete Brooke Utilities, Inc. as a
17 Party to the Complaint; (2) a Motion to Strike Complainant's Referral to Evidentiary Party; and (3) a
18 Unanimous Written Consent in Lieu of Meeting of the Board of Directors of Payson Water
19 Company, authorizing Mr. Hardcastle to represent Payson in this matter.

20 On March 21, 2012, Complainants filed (1) a Notice of Service of Process and Affidavit of
21 Attempted Service of Process and (2) a Notice of Service of Process and Affidavit of Service of
22 Process. The documents related to Administrative Subpoenas Duces Tecum issued to Martin's
23 Trucking Service and to Mr. Hardcastle for Payson/Brooke.

24 On March 22, 2012, Payson filed a Motion to Compel Identification of Author of Data Source
25 Included as Evidentiary Exhibit.

26
27 ¹⁹ Mr. Hardcastle requested to have Brooke stricken as a Respondent in this matter due to its status as a separate
corporation and a nonregulated entity. The request was taken under advisement.

28 ²⁰ The Procedural Order provided that any motion filed in this matter and not ruled upon by the Commission within 20
calendar days of the filing date of the motion shall be deemed denied.

1 On March 28, 2012, Complainants filed (1) a Response and Objection to Respondents Motion
2 to Strike Complainant's Referral to Evidentiary Party; Motion to Deny and (2) a Response and
3 Objection to Respondents Motion to "Delete" Brooke Utilities, Inc. as a Party to the Complaint and
4 Motion to Deny the Deletion of Brooke Utilities Inc. from the Complaint.

5 On March 30, 2012, Payson filed (1) a Motion to Modify Subpoena and (2) a Motion to Strike
6 Non-Affiliated Parties.

7 On April 2, 2012, Complainants filed a Response to Respondents Motion to Compel
8 Identification of Author of Data Source Included as Evidentiary Exhibit.

9 On April 2, 2012, Payson filed (1) a Reply to Complainant's Response to Payson Water Co.'s
10 Motion to Strike Non-Evidentiary Party and Motion to Deny and (2) a Reply to Complainant's
11 Response to Payson Water Co.'s Motion to Delete Brooke Utilities, Inc. as a Party to the Complaint.

12 On April 4, 2012, Complainants filed (1) a Response and Objection to Respondents Motion to
13 Modify Subpoena; Motion to Deny and Compel Compliance with the Subpoena by Order and (2) a
14 Response and Objection to Respondents Motion to Strike Non-Affiliated Parties; Motion to Deny.

15 On April 9, 2012, Payson filed a Reply to Complainant's Response to Payson Water Co.'s
16 Motion to Strike Non-Affiliated Parties and Motion to Deny.

17 On April 9, 2012, Complainants filed (1) a Motion to Compel Martin Zabala of Martin's
18 Trucking Service to Comply with Subpoena Duces Tecum; (2) an Objection to Respondents Reply to
19 Complainants' Response to Respondents' Motion to Strike Non-Evidentiary Party and Motion to
20 Deny; and (3) a Response and Objection to Respondents Motion to Modify Subpoena; Motion to
21 Deny and Compel Compliance with the Subpoena by Order.

22 On April 11, 2012, Complainants filed (1) a Response and Objection to Respondents Motion
23 to "Delete" Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny the Deletion of
24 Brooke Utilities Inc. from the Complaint and (2) an Objection to Respondents Reply to
25 Complainants' Response and Objection to Respondents Motion to Strike Non-Affiliated Parties;
26 Motion to Deny.

27 On April 12, 2012, Payson filed a Reply to Complainant's Second Response and Objection to
28 Respondents Motion to Modify Subpoena.

1 On April 13, 2012, Payson filed a Motion to Compel Complainants to Comply with
2 Discovery Request for First Set of Data Requests.

3 On April 16, 2012, Payson filed a Notice of Payson Water Co.'s Treatment of Brooke
4 Utilities, Inc. as a Non-Party to the Complaint.

5 On April 17, 2012, Complainants filed an Objection to Respondents Reply to Complainants'
6 "Supplement" (Second Response) and Objection to Respondent's Motion to Modify Subpoena.

7 On April 18, 2012, Payson filed a Motion to Compel Complainants to Comply with
8 Discovery Request for Second Set of Data Requests.

9 On April 19, 2012, Complainants filed (1) an Objection to Respondents Notice of PWC's
10 Treatment of Brooke Utilities, Inc. as a Non-Party to the Complaint and (2) a Notice of
11 Complainants' Compliance with Respondents' 1st and 2nd Data Requests.

12 On April 19, 2012, Payson filed a Supplemental Motion to Compel Complainant's Response
13 to the First and Second Set of Data Requests.

14 On April 20, 2012, Complainants filed a Notice of Service of Process and Record of
15 Attempted Service of Process. The documents related to an administrative subpoena duces tecum
16 issued to Pearson Transport/Pearson Water ("Pearson").

17 On April 20, 2012, Staff filed a Notice of Filing regarding the status of a subpoena issued to
18 Martin's Trucking Service.

19 On April 24, 2012, Complainants filed (1) a Motion to Compel Respondent's Compliance
20 with Subpoena, (2) an Objection to Respondent's Supplemental Motion to Compel Complainant's
21 Response to the 1st and 2nd Set of Data Requests, (3) a Notice of Complainants' Acknowledgement of
22 the Commission's Denial of Respondents' Motion to Modify Subpoena, and (4) a Notice of
23 Complainants' Acknowledgement of the Commission's Denial of Respondents' Motion to Strike
24 Referral to Evidentiary Party.

25 On May 9, 2012, Payson filed a Motion to Compel Complainants to Comply with Discovery
26 Request for Fourth Set of Data Requests.

27 On May 14, 2012, Complainants filed (1) a Response to Respondents' Motion to Compel
28 Complainants to Comply with Discovery Request for 4th Set of Data Requests and (2) a Request for

1 Procedural Hearing [on] Discovery and Disclosure Issues and Compliance with Subpoena.

2 On May 15, 2012, Mr. and Mrs. Jones filed a Notice of Complainants Bobby Jones and Lois
3 Jones Filing Their "Direct Testimony" per Procedural Order of March 19, 2012.

4 On May 15, 2012, Mr. Gehring filed a Notice of Complainant Gehring Filing his "Direct
5 Testimony" per Procedural Order of March 19, 2012.

6 On May 31, 2012, Payson filed an Objection to Complainant's First Set of Data Requests.

7 On June 6, 2012, Complainants filed a Motion to Compel Respondents to Comply with
8 Discovery Request for 1st Set of Data Requests. In the Motion, Complainants requested, *inter alia*,
9 that the hearing scheduled for June 26, 2012, be used to resolve discovery issues and that the
10 discovery schedule be extended for an additional 60 to 90 days.

11 On June 11, 2012, Complainants filed a Notice of Complainants' Initial Discovery and
12 Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et Seq.

13 On June 12, 2012, Complainants filed a Motion to Continuance [sic] Discovery Beyond the
14 Discussed and Unconfirmed Conclusion Date and for a Continuance of the Date Scheduled for
15 Hearing on the Complaint. Complainants requested, *inter alia*, that discovery and the evidentiary
16 hearing be continued for 60 to 90 days and that a procedural hearing on discovery and disclosure be
17 held.

18 On June 14, 2012, Staff filed a Notice of Filing Staff's Response.

19 On June 14, 2012, Complainants filed Notice of Complainants' Supplemental Discovery and
20 Disclosure No. 1 ARCP Rule 26.1 and AAC Rule R14-3-109 et. Seq.

21 On June 14, 2012, Payson filed the Rejoinder Testimony of Payson Water Co., Inc.

22 On June 15, 2012, Payson filed Respondent's Objection to Complainant's Motion to Continue
23 Discovery and Previously Scheduled Hearing.

24 On June 18, 2012, a Procedural Order was issued denying Complainants' request for
25 continuance of the discovery deadline and hearing date.

26 On June 18, 2012, Complainants filed Notice of Complainants' Supplemental Discovery and
27 Disclosure No. 2 ARCP Rule 26.1 and AAC Rule R14-3-109 et. Seq.

28 On June 21, 2012, Complainants filed (1) a Response to Respondents' Objection to

1 Complainants' Motion to Continue Discovery and Previously Scheduled Hearing and (2) Notice of
2 Complainants' Supplemental Discovery and Disclosure No. 3 ARCP Rule 26.1 and AAC Rule R14-
3 3-109 et. Seq.

4 On June 21, 2012, Payson filed Notice of Initial Disclosure.

5 On June 22, 2012, Complainants filed Notice of Complainants' Supplemental Discovery and
6 Disclosure No. 4 ARCP Rule 26.1 and AAC Rule R14-3-109 et. Seq.

7 On June 26 and 27, 2012, a full evidentiary hearing was held before a duly authorized
8 Administrative Law Judge of the Commission, with each Complainant appearing pro se, Payson
9 appearing through Mr. Hardcastle, and Staff appearing through counsel. Complainants presented
10 documentary evidence and the testimony of Mr. Hardcastle; David Allred; Mary Edna Hansen;
11 Evelyn Plante; Mr. Smith; Richard Madison Burt; and Mr. Gehring. Payson presented documentary
12 evidence and the testimony of Mr. Allred; Randy Norman; and Mr. Hardcastle. Staff presented
13 documentary evidence and the testimony of Jeffrey M. Michlik. At the conclusion of the hearing, it
14 was announced that the record was considered closed pending issuance of a recommendation to the
15 Commission.

16 On July 13, 2012, Complainants filed a Notice and Motion to Submit Newly Discovered
17 Evidence Post Hearing ARCP Rule 60 and AAC Rule R14-3-109 et. Seq.

18 On July 20, 2012, Payson filed an Objection to Complainant's Late Filed Evidentiary
19 Exhibits.

20 On July 24, 2012, Complainants filed a Reply to Respondent's Objection to Complainants'
21 "Late Filed Evidentiary Exhibits."

22 On July 24, 2012, Patricia A. Behm, a property and well owner and customer in the MDC
23 service area, filed a Motion to Intervene.

24 On September 13, 2012, Mary E. Hansen, a property and well owner and customer in the
25 MDC service area, filed a Motion to Intervene.

26 **III. THE COMPLAINT**

27 **Generally**

28 The Complaint makes the following major allegations, all concerning events that occurred

1 within the period from May 1 through October 30, 2011.²¹

2 Counts A, B, and C: The WAS resulted in unauthorized corporate profits and consumer fraud upon
3 the customers/complainants of MDC because Payson failed to comply with Decision No. 71902 and
4 Arizona law; fraudulently billed MDC customers for the WAS; and used a spreadsheet for the July
5 2011 WAS calculations that was false, fraudulent, and a misrepresentation of material facts and
6 evidence.

7 Count D: Payson misapplied the revised Curtailment Tariff, failed to mail out its May 2011
8 statements and then shut off customer meters for alleged nonpayment, and unnecessarily harassed
9 customers for their daily usage.

10 Count E: Payson made misrepresentations to the Commission and other regulatory agencies in
11 falsified public records to revise the Curtailment Tariff and secure a WAS by creating an artificial
12 emergency situation.

13 Count F: Information publicly disclosed by Payson at the July 21 and August 4, 2011, public
14 meetings at the 1st Church of the Nazarene was misleading and false.

15 Through these actions, Complainants assert, Payson has or may have committed violations of
16 A.R.S. §§ 40-334(A) and (B), 44-1522, and 40-202(K); A.A.C. R14-2-209 et seq.; and Decision No.
17 71902.²² (See Complaint at 11-12.)

18 Complainants also assert that they “cannot be held to the arbitrary and deceitful business
19 practices, predatory fees/rates, misrepresentations and abuses” of Payson and that the “Customers and
20 Complainants cannot be held accountable to any representations or agreements made by members of
21

22 ²¹ The bases for the Complaint were labeled A through F and herein are referred to as Counts with subcounts. To
23 reduce the repetition that would otherwise result from the interrelatedness of Counts A, B, and C, they are grouped
24 together for discussion and resolution herein. Additionally, the allegations are described in regard to alleged actions by
Payson, although the Complainants made the allegations against Payson/Brooke, essentially characterizing the two as a
single entity. The Complainants did not provide sufficient evidence to justify piercing the corporate veil in this matter.
Furthermore, Brooke is no longer involved in Payson’s operations.

25 ²² Complainants also referred to other statutes and some Commission rules: A.R.S. § 40-334(A) and (B), which
26 generally prohibit public service corporations from discriminating against any person or unduly differentiating between
localities or classes of service; A.R.S. § 44-1522, which is a consumer protection statute generally prohibiting the use of
false or misleading information or practices in the sale or advertisement of merchandise; A.R.S. § 40-202(K), which is a
citation error understood to refer to A.R.S. § 40-202(L), generally requiring a public service corporation to comply with
27 Commission decisions, rules, and orders; and A.A.C. R14-2-209 et seq., which is a reference to part of the Commission’s
rules for electric utilities and is understood to be a citation error, as the Commission’s rules for water utilities are found at
28 A.A.C. R14-2-401 et seq. (See Complaint at 11-12.)

1 the MDC WC (i.e. El Caballo Club Water Committee) for any of their illegal activities.” (*Id.* at 12.)

2 Mr. Gehring individually also asserted the following:

3 [Payson/Brooke] and Mr. Hardcastle view it’s/his MDC Customers and
4 these Complainants as Exploitable Indentured, Human Resources for
5 unlimited Revenue Generation by any means possible for the benefit of his
6 and the Corporate Profit much like that British King back in 1776 who
7 viewed the Colonists similarly and incorrectly as dumb, stupid and
8 ignorant “subjects” required to pay homage and servitude to the King.

9 Further, Mr. Hardcastle believes these alleged subjects must bend to the
10 King’s/Corporate Will and that they must accept what ever water crumbs
11 he/it provides and submit in indentured servitude for the profane and
12 obscene effort. Take heart, a revolution and period of accountability is a-
13 foot that he/it must answer to and make amends to their Victims for.²³

14 Relief Sought:

15 In their Complaint, the Complainants sought the following relief:

- 16 1. The ACC should suspend, place a Stay of Proceedings or issue an
17 Order of Injunction on the application of the orders prescribed in ACC
18 Decision 71902 (incl. Exhibits A & B) concerning the revision of the
19 Curtailment Plan, the previous Curtailment Plan and the Water
20 Augmentation Surcharge due to and because of the obvious abuses of
21 that plan and surcharge by PWC/BU and until a proper and thorough
22 criminal investigation and accounting can be conducted into these
23 matters by the ACC legal Department and the Attorney General’s
24 Office. Further, the ACC should consider the revocation of PWC/BU
25 monopoly certificate (CC&N) to be the provider of water to the
26 community of Mesa del Caballo and turn management of the MDC
27 System over to a more qualified provider in the interim, such as the
28 Town of Payson Water Department;
2. The ACC must request of ADEQ to make a full evaluation of the
PWC/BU’s entire Mesa del Caballo System and **ALL** wells connected
to that system. All of PWC/BU’s Annual Reports 2006 through 2010
concerning well production, water sold, water purchased in Water
Sharing Agreements and Water Hauling be reviewed for accuracy and
legality to determine the availability and quantity of all water
resources within that system, what it will take to bring non-producing
wells back into production and if in fact there exists a Real Emergency
or if one was Artificially created by PWC/BU;
3. Clearly PWC/BU failed or refused to abide by ACC Decision No.
71902 and Exhibits A & B to make a unjust profit in spite of the
prohibition so stated in the Decision. Therefore, PWC/BU must, make
corrections to and adjust all Customers and Complainant’s Statements
for the period July 2011 through October 2011 and refund charges in
excess to all Customers and Complainants for the Water Augmentation
Surcharge and Taxes billed in excess. All money due to any Customer
or Complainant from the date of the July 2011 statement forward must

²³ Complaint at 13 (paragraph numbers omitted).

be paid back in full plus interest at the rate of 10% per month compounded monthly 120% APR on any unpaid balance until full payment has been retrieved by the Customers and Complainants and any funds plus interest held in Trust to offset costs of hauling shall be applied and a full accounting thereof be submitted for review;

4. The ACC should initiate a criminal investigation into all of the criminal business activities of PWC/BU, its President, Statutory Agent and Stock Holder, Robert T. Hardcastle and his officers, agent and employees concerning those activities inclusive of the years 2009, 2010 and 2011 and if necessary all the way back to MDC System acquisition and inclusive of all of the unwarranted harassment of Customers and Complainants and all of the unreasonable disconnections, rate increases and Curtailment Plans;
5. No Customer or Complainant must, suffer disconnection for failure to pay May 2011 Statements due to PWC/BU negligence in trashing the May 2011 Statements or for their refusal to pay the Water Augmentation Surcharge and Taxes associated with it;
6. No reconnection fee should be charged to any Customer or Complainant;
7. PWC/BU should be made to refund any Customer or Complainant for the inconvenience and injury caused to them by the Company's negligence in these matters. All money due to any Customer or Complainant from the date of any disconnection forward must be paid back in full plus 10% per month compounded monthly 120% APR on any unpaid balance until full payment has been received by the Customer or Complainant[.]²⁴

Counts A, B, and C

1. The Allegations

Complainants allege that the WAS resulted in unauthorized corporate profits and consumer fraud upon the Complainants and other customers of MDC because Payson failed to comply with Decision No. 71902 and Arizona law; fraudulently billed MDC customers for the WAS; and used a spreadsheet for the July 2011 WAS calculations that was false, fraudulent, and a misrepresentation of material facts and evidence.²⁵ Related to these Counts, Complainants make the following specific allegations:

a. Because Payson applied the WAS to all customer usage,²⁶ and Payson did not purchase and haul all of the water used by MDC customers during the period from May 1 through October 30, 2011, the WAS was not applied on a proportional basis as required, and Payson

²⁴ Complaint at 13-14. Mr. Gehring acknowledged that the Commission is not able to award damages. (Tr. at 312.)

²⁵ See Complaint at 1-7.

²⁶ According to Complainants, "Exhibit B of Decision No. 71902" set forth the proper method of calculating the WAS, based on "water hauled proportionate to water used," and did not state that customers' total water usage was subject to the WAS. (*Id.* at 3.)

1 overcharged the MDC customers;

2 b. MDC customers were overcharged for the taxes associated with the WAS;

3 c. Payson unlawfully retroactively applied the WAS in the July 2011 statements by
4 including costs for the billing period from May 17 to July 16, 2011;

5 d. Payson used "incorrect, abusive, falsified, [and] excessive" figures, invoices, and
6 calculations for the WAS, to "effect an illicit profit for the Company" in violation of Decision No.
7 71902; and

8 e. Payson knowingly and intentionally "padded the bill," falsified hauling records and
9 public records submitted to the Commission, failed to apply trust money designated to offset hauling
10 costs, and billed its MDC customers for water hauled elsewhere, all "in the course of a fraudulent
11 billing practices scheme" for Payson's "unjust enrichment," and in violation of Decision No. 71902
12 and state and federal consumer protection and tax laws.

13 Some of the Complainants' allegations are based upon the Complainants' position that the
14 correct cost per round trip to haul one 6,000-gallon tanker of water from the Town's hydrant to MDC
15 is \$187.50, that dividing the total hauling costs claimed by \$187.50 demonstrates how many gallons
16 of water were actually purchased by Payson and charged to MDC; that the Town billed Payson for
17 \$1,221.59 on July 1, 2011; and that Decision No. 71902 required Payson to apply the WAS only to
18 the percentage of a customer's water usage equal to the ratio of total water hauled to total water used
19 by the entire system. (*See, e.g.,* Complaint at 4, 7.) The following example from the Complaint
20 illustrates the Complainants' position:

21 a) We know that the [Town] billed [Payson] (on July 1, 2011)
22 \$1,221.59 for 189,700 gal. of water at \$6.40 per 1000 gal. and that the
23 total cost to purchase and haul 6,000 gallons of water is \$225.90. The
24 total cost per gallon purchased and hauled is \$.03765 and that [Payson's]
25 original estimates are slightly different;

26 b) Subtracting the cost of the water (\$0.0064/gal.) from the total cost
27 of the water and hauling (\$0.03765/gal.) yields the cost of hauling to be
28 \$0.03125/gal. slightly greater than [Payson's] original estimate;

c) According to the [Payson] Spreadsheet and [Town] Records and
Invoices, Pearson Water appears to have incorrectly invoiced and over
charged [Payson] \$9000.00 to haul 189,700 gal. of water during the period
June 23 to July 22, 2011 on 6/30 Inv. 8807, 7/7 Inv. 8807 and 7/14 Inv.
8812; where in fact these are probably not the actual hauling dates and

costs. Furthermore, the actual cost to haul 189,700 gallons, is \$6,000.00. A difference of \$3,000.00 or the cost to haul an additional 96,000 gallons of water;

d) The proportional amount of water hauled to water used (consumed) in the June 17 to July 16, 2011 billing period is 189,700 gal. (water hauled) ÷ 1,234,320 gal. (water used) = .1536%;

e) .1536% is the percentage of water hauled of the total water consumed by all of the MDC Customers;

f) For the Customer who consumed a total of 11,330 gal. X .1536% = 1,740 gallons of hauled water that the Customer consumed which is proportional to the Customer's total usage;

g) Therefore, the Customer's "Water Augmentation Surcharge" should have been 1,740 gal. X \$0.03765 = \$65.51 on the July 2011 Statement and not \$154.09 a difference of \$88.58.²⁷

2. The Evidence

The relevant documentation provided related to Counts A, B, and C includes, *inter alia*, a printout from the Town showing the activity on Brooke/Payson's account from May 18, 2010, through June 11, 2013, and on Payson's account from June 12, 2013, through December 29, 2014;²⁸ Pearson invoices and hauling logs for water purchased from the Town and hauled to MDC from June 7, 2011, through September 28, 2011;²⁹ Pearson invoices and one hauling log for water purchased from the Town and hauled to EVP from approximately July 7, 2011, through September 28, 2011;³⁰ a Payson 2011 MDC Water Augmentation Worksheet dated June 7, 2012, showing the amounts charged to MDC for Town water and hauling and to EVP for Town water during the summer of 2011;³¹ an excerpt from a February 10, 2014, Proposal for Professional Engineering Services created by Tres Rios Consulting Engineers, stating that 58,873 gallons of water were hauled to EVP in 2011;³² a Town Administrative Policy dated February 2010 regarding provision of a supplemental water supply to MDC;³³ Brooke's MDC Water Augmentation Charges Calculation for expenses billed in July 2011;³⁴ MDC customer consumption printouts from May 20, 2011, through October 16,

²⁷ Complaint at 6-7 (citations omitted).

²⁸ See Smith Ex. C-11; Smith Tr. at 33-34, 178. Payson established its own account after the change in ownership. (See Smith Ex. C-11.)

²⁹ See Smith Ex. C-8 at 5-7, 10-11, 13-14, 16-17, 19-20, 22-23, 25-26, 28, 30-31, 33, 35, 36-37, 39-40.

³⁰ See Smith Ex. C-4 at 31-34; Ex. C-8 at 28.

³¹ See Ex. R-6.

³² See Smith Ex. C-4 at 81; Smith Tr. at 177-78.

³³ See Smith Ex. C-4 at 23-24.

³⁴ See Smith Ex. C-10.

1 2011;³⁵ Staff's calculation of the WAS rate for June-July 2011, with supporting documents;³⁶ and a
 2 copy of the WAS tariff, in its original and revised versions.³⁷ The table attached hereto and
 3 incorporated herein as Exhibit 1 compiles the information provided in the Town's billing
 4 information, the Pearson invoices, and the hauling logs to show the Town water purchase activity and
 5 the hauling related thereto for both MDC and EVP. The information demonstrates that water
 6 purchased from the Town was hauled to EVP on four separate occasions when water was also being
 7 hauled to MDC. While some of the hauling logs for EVP are not available, the invoice information
 8 and the gaps in the hauling logs for MDC, coupled with the quantities of water purchased from the
 9 Town in the pertinent periods, establish approximately how much water EVP received. The Pearson
 10 invoices also establish that EVP was not charged for travel time on any of these four occasions, while
 11 MDC was charged \$600 in travel time for each.

12 Mr. Pearson's testimony in the Smith Docket establishes that Pearson hauled Town water
 13 from a bulk hydrant meter to both MDC and EVP; billed Brooke-MDC and Brooke-EVP on an
 14 hourly basis for water hauling services, not by load or by gallons hauled; and also billed Brooke-
 15 MDC for the travel time from Williams to the Town and back again.³⁸ (See Smith Transcript of Mr.
 16 Pearson's testimony at November 17, 2014, Procedural Conference ("11/17/14 Tr.") at 15, 19-20, 22,
 17 24, 26-27, 38.) Pearson's drivers wrote meter readings down for each load on the hauling logs, which
 18 were provided to Payson when the hauling was over. (See 11/17/14 Tr. at 15-16, 35-36.) Mr.
 19 Pearson testified that while Pearson's drivers may have made mistakes in the load meter read entries,
 20 the total read at the beginning and the end would have been correct. (11/17/14 Tr. at 15-16.)
 21 Pearson's hauling log meter reads and load counts were provided for Payson's informational
 22 purposes, not for any billing purposes; Pearson always provided the hauling logs to Payson.
 23 (11/17/14 Tr. at 24, 35.) Mr. Pearson stated that each truck held approximately 6,000 or 6,500
 24 gallons and that it took approximately two hours round trip for each load, including the loading and
 25

26 ³⁵ See Smith Ex. C-3 at 1-48.

27 ³⁶ See Ex. S-3.

28 ³⁷ *Id.*

³⁸ Mr. Smith repeatedly used the Pearson invoices and hauling logs as evidence of the actual amounts of water hauled, rather than as evidence of the cost charged by Pearson for the hauling services. (See, e.g., Smith Tr. at 98-100, 103-04; Smith Ex. C-2 at app. A, app. B.)

1 unloading process. (11/17/14 Tr. at 23.) The drivers sometimes hauled for periods as long as 24
2 hours straight, without taking lunch or other breaks. (11/17/14 Tr. at 16, 27.) As Mr. Pearson recalls,
3 a Payson representative was there at the beginning to install the meter on the hydrant and take a meter
4 reading and was there at the end to take a meter reading and remove the meter. (11/17/14 Tr. at 30-
5 31, 33.)

6 According to Mr. Garrett's testimony in the Smith Docket, the Town would install the water
7 meter upon Payson's request and would provide the meter readings as well. (Smith Tr. at 47.)
8 Payson was a water customer of the Town just like any other customer and purchased water from the
9 Town on a monthly basis, paying the same rates as any other customer, but taking its water from a
10 bulk fire hydrant meter set up behind a Home Depot within Town limits. (Smith Tr. at 23-25, 45-47.)
11 The Town created an Administrative Policy for the provision of supplemental water to MDC in
12 February 2010, allowing Brooke to purchase up to 86,400 gallons of water daily for use by MDC
13 customers and making Brooke responsible for transporting the water to MDC. (See Smith Ex. C-4 at
14 23-24; Smith Tr. at 27-30.) The Administrative Policy did not mention EVP. (*Id.*) No evidence was
15 produced indicating that the Town was aware water was being hauled to EVP in 2011. (See Smith
16 Tr. at 48-49.)

17 Complainants have alleged that water was hauled from another system to EVP. (Complaint at
18 2, 5.) Mr. Smith made a similar allegation in the Smith Docket, although he specifically alleged that
19 water from MDC's tanks was hauled to EVP. In this matter, Ms. Plante testified that in summer
20 2011, she observed from her home near the MDC tanks property that a tanker truck appeared to be
21 empty when entering the MDC tanks property and appeared not to be empty when leaving the MDC
22 tanks property. (Tr. at 176-78.) Ms. Plante, who holds a commercial driver license ("CDL") and
23 formerly drove trucks cross-country, opined that the truck went into the MDC tanks property empty
24 and took water out of the tank instead of putting water into the tank. (*Id.* at 177-78, 179-80.) Ms.
25 Plante acknowledged that she did not have proof that water was being hauled out of MDC as a source
26 for another location, although that was her opinion. (*Id.* at 180-81.) Complainants also produced the
27
28

1 affidavit of Larry Olson, signed June 25, 2012,³⁹ in which Mr. Olson stated that in summer 2010, he
2 observed a water truck driver with his tanker hooked up to a pump that appeared to be pumping water
3 from an MDC storage tank to the tanker, asked the driver whether he was pumping water out of the
4 tank, and left after the driver did not reply. (Ex. C-6 at 12.) Mr. Olson stated that he saw the same
5 truck on a second occasion leaving the storage facility with a load of water that sloshed off the top
6 and sides of the tanker when it went over a cattle guard and that Mr. Olson followed the tanker
7 briefly and again saw water slosh off the top and sides when it went over a second cattle guard. (*Id.*)
8 Mr. Smith also testified in this matter that he held a CDL with a tanker endorsement and that he took
9 a photo of a tanker near the MDC tanks leaving MDC with water trailing behind it. (Tr. at 185-90.)
10 Mr. Smith testified that the back of the tanker could have been trailing water either because its valve
11 was not capped and the tank held residual water or because it was full of water, but that he could not
12 tell which was the case. (*Id.* at 190-91.) In the Smith Docket, Mr. Smith produced an affidavit
13 completed by Dennis Tresca, who stated that he had seen a tanker pumping water from an MDC tank
14 into the tanker in approximately late June to early July 2011.⁴⁰ (Smith Ex. C-6 at 16.) Neither Mr.
15 Olson nor Mr. Tresca testified during a hearing.

16 Mr. Pearson testified that the tanker trucks are never completely emptied by pumping and that
17 approximately 100 gallons of water generally remain after they are unloaded. (11/17/14 Tr. at 37.)
18 He also stated that he never took water out of an MDC tank for delivery to another location and was
19 never instructed to do so. (Ex. R-4 at 5.)

20 The WAS rate for the June 2011 hauling period was calculated by taking the total amount
21 invoiced by Pearson for hauling from May 23, 2011, through July 3, 2011 (\$15,900); adding it to the
22 Town water bill from May 23, 2011, through June 23, 2011 (\$863.77); and dividing that by the total
23 consumption for MDC from June 17, 2011, through July 16, 2011 (1,234,320 gallons). (Smith Ex.
24 C-10; Ex. S-3.) The result was a WAS rate of \$0.0136 per gallon. (Smith Ex. C-10; Ex. S-3.) This
25 WAS rate was then applied to the total gallons consumed on each individual customer's bill. (*See*
26 Ex. S-3; Payson's Motion to Compel Response to Data Request by Payson Water Co., Inc., filed in

27 ³⁹ Mr. Olson did not appear as a witness in this matter. Mr. Gehring stated that Mr. Olson was quite ill and could not be
at the hearing. (Tr. at 183.)

28 ⁴⁰ Mr. Tresca was not called as a witness in the Smith Docket.

the Smith Docket on May 28, 2014⁴¹ ("Payson MTC").) Staff determined that this was the correct manner of calculating the WAS rate and of applying the WAS rate to each customer's bill. (Smith Tr. at 224-25.) Further, Mr. Carlson stated that because Staff was very concerned about having ratepayers reimburse the company each month for the prior month, Staff scrutinized the Payson WAS calculation filings more closely than usual. (Smith Tr. at 225.) Every month, Payson sent Staff the calculations and invoices, Staff checked the calculations and invoices, and Payson waited for Staff approval to assess the WAS on ratepayer bills. (Smith Tr. at 220-25.) Mr. Carlson testified that Staff allowed the travel time for the hauler because of a shortage of haulers in northern Arizona and the absence of a hauler in Payson. (Smith Tr. at 228.)

The bills from the Store account show that the Store was charged a total of \$301.87 in WAS for the period from June 16, 2011, through October 16, 2011, with the following monthly breakdown:⁴²

Service Dates:	6/16/11 - 7/16/11	7/16/11 - 8/17/11	8/17/11 - 9/16/11	9/16/11 - 10/16/11
End Read:	2,759,570	2,769,120	2,777,800	2,789,050
Beginning Read:	2,748,240	2,759,570	2,769,120	2,777,800
Gallons Used:	11,330	9,550	8,680	11,250
WAS Rate per Gallon:	\$0.01360	\$0.00590	\$0.00820	\$0.00180
WAS Charged:	\$154.09	\$56.35	\$71.18	\$20.25

It is unclear how much the Jones account was charged in WAS, as the Complainants did not provide a September 2011 billing statement for the Jones account.⁴³

Payson and Staff both provided a summary chart showing the Town costs and Pearson costs figured into the WAS for June-July, July-August, August-September, and September-October 2011, and also showing the deduction of EVP water charges. (See Ex. R-6; Ex. S-1.) The chart is attached hereto and incorporated herein as Exhibit 2.⁴⁴

Mr. Smith produced copies of printouts from Payson, provided to Staff in 2012 in response to a data request made in this matter, showing customer consumption, by meter number, for the periods

⁴¹ Official notice is taken of this document.

⁴² See Complaint at ex. A at 1-6.

⁴³ See Complaint at ex. A at 7-12. The Complainants included a statement from September 2010 instead. (See Complaint at ex. A at 11.)

⁴⁴ See Ex. R-6; Ex. S-1.

of April-May 2011 through September-October 2011. (See Smith Ex. C-3 at 1-48; Smith Tr. at 129-30.) Adding all of the numbers for June-July 2011 reveals a total consumption for the month of 1,234,320 gallons. (See Smith Ex. C-3 at 17-24.)

Documentation⁴⁵ provided by Complainants shows the following billing-related activity for the Store/Mr. Gehring and Mr. and Mrs. Jones during the period in question:

Store/Mr. Gehring

Billing Statement Date	5/20/11	6/22/11	7/22/11	8/24/11	9/22/11	10/22/11
Usage Period	4/16/11 – 5/16/11	5/16/11 – 6/16/11	6/16/11 – 7/17/11	7/16/11 – 8/17/11	8/17/11 – 9/16/11	9/16/11 – 10/16/11
Starting Meter Read	2,720,480	2,735,390	2,748,240	2,759,570	2,769,120	2,777,800
Ending Meter Read	2,735,390	2,748,240	2,759,570	2,769,120	2,777,800	2,789,050
Usage (Gallons)	14,910	12,850	11,330	9,550	8,680	11,250
Previous Balance	\$77.87	\$89.01	\$83.08	\$214.06	\$104.07	\$117.23
Payments	\$50.00	\$60.00	\$84.00	\$214.06	\$104.07	\$117.23
Late Fee	\$0.42	n/a	n/a	n/a	n/a	n/a
Reconnection Fee	n/a	n/a	n/a	n/a	n/a	n/a
WAS	n/a	n/a	\$154.09	\$56.35	\$71.18	\$20.25
Credits	n/a	n/a	n/a	n/a	n/a	n/a
Total Amount Due	\$89.01	\$83.08	\$214.06	\$104.07	\$117.23	\$70.71
Due Date	6/4/11	7/7/11	8/6/11	9/8/11	10/7/11	11/6/11
Paid Date	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown

Mr. and Mrs. Jones

Billing Statement Date	4/22/11	6/22/11	7/22/11	8/24/11	10/22/11
Usage Period	3/16/11 – 4/16/11	5/16/11 – 6/16/11	6/16/11 – 7/16/11	7/16/11 – 8/17/11	9/16/11 – 10/16/11
Starting Meter Read	800,980	816,040	825,770	830,810	840,900
Ending Meter Read	807,970	825,770	830,810	836,600	846,920
Usage (Gallons)	6,990	9,730	5,040	5,790	6,020
Previous Balance	\$42.11	\$117.74	\$83.83	\$187.72	\$240.21
Payments	n/a	\$77.92	n/a	\$105.35	\$173.19
Late Fee	\$0.62	n/a	\$1.24	\$1.22	\$0.97
Reconnection Fee	n/a	n/a	n/a	\$43.04	n/a

⁴⁵ See Complaint at ex. A at 1-12. Mr. and Mrs. Jones did not provide billing statements from May 2011 or September 2011. (See *id.*)

WAS	n/a	n/a	\$68.54	\$34.16	\$10.84
Credits	n/a	n/a	n/a	n/a	n/a
Total Amount Due	\$77.92	\$83.83	\$187.72	\$194.71	\$111.72
Due Date	5/7/11	7/7/11	8/6/11	9/8/11	11/6/11
Paid Date	5/23/11 ⁴⁶	Unclear ⁴⁷	Not noted	Not noted	10/28/11 ⁴⁸

3. The WAS Tariff

As stated previously, the language to be used for the WAS tariff was not included in Decision No. 71902. After the issuance of Decision No. 71902, Payson first filed a WAS tariff on October 28, 2010.⁴⁹ The 1st WAS tariff stated that the WAS would be effective between May 1 and September 30 of each year, beginning in 2011 and until the conclusion of Payson's next rate case, and that it applied only to MDC system customers. (See 1st WAS tariff.) It also stated the following regarding calculation of the WAS:

Calculation – Each customer's monthly surcharge shall be calculated based on the company's prior month's water hauling costs, and compared to the customer's water usage during that particular month. The only costs recovered by the company through this interim surcharge will be the cost of water supply and transportation costs; there will be no administrative costs or profit component of this surcharge.⁵⁰

On November 22, 2010, Payson filed a revised WAS tariff to replace the 1st WAS tariff.⁵¹ The 2nd WAS tariff did not substantively change the calculation language quoted above or the applicability and term of the WAS. (See 2nd WAS tariff.) Rather, it added an exemption for customers who use 4,000 gallons or less per month based on a 12-month rolling average. (*Id.*)

On June 17, 2011, Staff filed stamped copies of the 2nd WAS tariff (along with the Curtailment Tariff as filed with the 2nd WAS tariff).⁵² The stamped copies showed an effective date of September 28, 2010. The stamped WAS tariff included the exemption language. (See approved

⁴⁶ A notation on the payment coupon appears to indicate that the total due was paid electronically on 5/23/11. (See Complaint at ex. A at 7.)

⁴⁷ A notation on the payment coupon appears to indicate that the total due was paid electronically, but no clear date is notated (there is a notation of "05.35"). (See Complaint at ex. A at 8.)

⁴⁸ A notation on the payment coupon appears to indicate that the past due charges were paid electronically on 10/28/11. (See Complaint at ex. A at 12.)

⁴⁹ See Payson's Notice of Compliance filed in the WAS Docket on October 28, 2010 ("1st WAS tariff"), of which official notice is taken.

⁵⁰ 1st WAS tariff.

⁵¹ See Payson's Notice of Compliance (Errata) filed in the WAS Docket on November 22, 2010 ("2nd WAS tariff"), of which official notice is taken.

⁵² See Staff's Notice of Compliance letter filed in the WAS Docket on June 17, 2011 ("approved tariffs filing"), of which official notice is taken.

1 tariffs filing.)

2 On August 17, 2011, Payson filed another revised WAS tariff to replace the 2nd WAS tariff.⁵³
 3 Payson stated that the 2nd WAS tariff had erroneously exempted certain customers from the WAS,
 4 although those customers were not exempted by Decision No. 71902. (3rd WAS tariff.) The 3rd
 5 WAS tariff did not substantively change the applicability or calculation language, but removed the
 6 exemption inserted in the 2nd WAS tariff. (See 3rd WAS tariff.)

7 On August 30, 2011, Staff filed a Notice of Compliance showing that a revised WAS tariff
 8 had been approved with an effective date of September 28, 2010, but without including the
 9 referenced stamped copy of the revised WAS tariff approved.⁵⁴ Based on the timing of this filing, we
 10 conclude that the approved tariff language was that of the 3rd WAS tariff.

11 On its face, the calculation language quoted above lacks clarity. Complainants' allegations
 12 regarding its meaning lend credence to that conclusion, as did Mr. Smith's similar assertions.
 13 Because Decision No. 71902 did not provide the specific language for the WAS tariff, to understand
 14 what the Commission was approving in the Decision, it is helpful to review the proposed WAS tariff
 15 language that preceded the issuance of Decision No. 71902. The application for the WAS tariff
 16 included as a proposed WAS tariff the document attached hereto and incorporated herein as Exhibit
 17 3.⁵⁵ The App. WAS tariff provided the following regarding calculation of the WAS for each
 18 customer:

19 The Water Augmentation Surcharge shall be calculated by dividing the
 20 total Water Augmentation Costs incurred in a calendar month by the total
 21 amount of water sold to its customers for the same period. The resulting
 22 rate per 1,000 gallons of water will then be multiplied by the gallons used
 in the same period for each customer to determine the surcharge amount
 per 1,000 gallons. The resulting Water Augmentation Surcharge will be
 charged to Water System customers in the immediately following period
 as a separate line item on the customer's water bill.⁵⁶

23 While the quoted App. WAS tariff language is imprecise in its use of gallons versus 1,000 gallons, it

25 ⁵³ See Payson's Notice of Correction filed in the WAS Docket on August 17, 2011 ("3rd WAS tariff"), of which official
 26 notice is taken.

⁵⁴ See Staff's Notice of Compliance letter filed in the WAS Docket on August 30, 2011 ("2nd approved tariff filing"),
 27 of which official notice is taken.

⁵⁵ See Application for Approval of Water Augmentation Surcharge Tariff, filed in Docket No. W-03514A-10-0116 on
 28 March 31, 2010, at ex. 4 ("App. WAS tariff"), of which official notice is taken.

⁵⁶ App. WAS tariff.

1 is clear as to the customer usage to which the WAS rate is to be applied—all of the gallons used in
2 the period by the customer, not just those gallons corresponding to the percentage of water hauled for
3 the system. (See Exhibit 3.)

4 4. Resolution

5 At their essence, Counts A, B, and C allege that Payson intentionally misapplied the WAS
6 tariff so as to perpetrate a fraud on MDC customers and unjustly enrich itself. The subcounts
7 identified by the Complainants concern (1) application of the WAS to all customer usage; (2) tax
8 overcharges; (3) retroactive application of the WAS in the July 2011 statements; (4) use of “incorrect,
9 abusive, falsified, [and] excessive” figures, invoices, and calculations for the WAS; and (5) “padding
10 [of] the bill” by not applying trust money to offset hauling costs, billing MDC customers for water
11 hauled elsewhere, and using falsified hauling records and other records. We consider each of these
12 below.

13 Subcount (1) Application of the WAS to All Customer Usage

14 The evidence provided does not show that applying the WAS to all customer usage was
15 inappropriate. Rather, it shows that the WAS tariff calculations were performed in a manner
16 substantially consistent with the App. WAS tariff approved in Decision No. 71902 and with its less
17 clear counterparts, the 1st, 2nd, and 3rd WAS tariffs. As approved, the WAS tariff required Payson
18 to determine the total documented water augmentation costs incurred for a month, to divide that total
19 by the total amount of water sold for the month to obtain a surcharge amount per gallon or thousand
20 gallons, to apply that surcharge amount to each water customer’s consumption for the month, and to
21 bill the result as a separate line item on the customer’s bill. Payson was not permitted to include any
22 administrative costs or profits in the WAS, only documented costs. The WAS was clearly intended
23 to apply to a customer’s entire usage for the month, not just to a percentage of that usage based on
24 another calculation.

25 Subcount (1) is not substantiated.

26 Subcount (2) Tax Overcharges

27 The Complainants allege that MDC customers were overcharged taxes on their bills
28 containing WAS because the WAS figures were included in the tax calculation, which the

1 Complainants assert means that they were taxed at least twice on the amount of water purchased for
 2 the month. The Complainants' bills do show that Gila County and Arizona state taxes were
 3 calculated using a total figure that included the WAS, with the tax rate at 7.6 percent, which was the
 4 correct tax rate at the time.⁵⁷ Additionally, A.R.S. § 42-5063 did not in 2011 (and does not now)
 5 deduct surcharge proceeds from a utility's tax base (the gross proceeds of sales or gross income that
 6 is derived from sales), to which the transaction privilege tax is to be applied.⁵⁸ Further, A.A.C. R14-
 7 2-409(D)(5) provides: "In addition to the collection of regular rates, each utility may collect from its
 8 customers a proportionate share of any privilege, sales or use tax."

9 The evidence establishes that Payson collected from its customers proportionate shares of the
 10 transaction privilege/sales taxes Payson was required to collect under state and county law. This was
 11 permissible under the Commission's rules.

12 Subcount (2) is not substantiated.

13 Subcount (3) The July 2011 Statements

14 The documents presented to calculate the hauling costs for the period from May 23 through
 15 July 3, 2011, although representing a period longer than one month, were appropriately grouped
 16 together. The Town's billing period ran from May 23 through June 23, 2011, with billing on June 28,
 17 2011, and did not coincide completely with Payson's July 2011 billing period, which covered usage
 18 from June 16 through July 16, 2011. In light of the differences in the billing periods, it was just and
 19 reasonable for Payson to calculate the WAS in the manner it did, using the Town invoice for usage in
 20 the period ending June 23, 2011; the Pearson hauling invoices for hauling completed between June 7
 21 and July 3, 2011; and customer water usage data for the period from June 16 through July 16, 2011.
 22 Likewise, it was just and reasonable for Payson to calculate the WAS in a similar manner for the
 23 August 2011, September 2011, and October 2011 MDC customer bills.

24 Subcount (3) is not substantiated.

25 Subcount (4) Use of "incorrect, abusive, falsified, [and] excessive" figures, invoices, and
 26 _____

27 ⁵⁷ The Arizona Department of Revenue's Arizona State, County, and City Transaction Privilege and Other Tax Rate
 Tables effective June 1, 2011, of which official notice is taken, show that the combined state transaction privilege tax rate
 and county excise tax rate for utilities in Gila County at that time was 7.60 percent.

28 ⁵⁸ See A.R.S. § 42-5063; Laws 2010, Ch. 225, § 4. Official notice is taken of these statutes.

1 calculations for the WAS

2 A close review of the documents provided to Staff to support Payson's calculation of the
3 WAS for Payson's July 2011 billings and of the larger group of documents used to create Table 1 did
4 not reveal any discrepancies or signs of alteration supporting the Complainants' allegations of
5 falsification or abuse. As stated above, however, the Pearson invoices do reveal that MDC alone was
6 charged for travel time on the four occasions when Town water was hauled to both MDC and EVP.
7 Although there is no evidence to indicate that the travel time was billed to MDC at Payson's
8 direction, or that Payson could have so directed Pearson, it does support the Complainants' assertion
9 that excessive figures were used to calculate the WAS. As we concluded in the Smith Docket, MDC
10 should have been required to pay only 50 percent of the travel time costs on the four occasions when
11 both MDC and EVP received hauled water.

12 Subcount (4) is substantiated, to the extent that MDC customers were charged for 100 percent
13 of the travel time on the four occasions when hauling to EVP also occurred. The remainder of
14 Subcount 4 is not substantiated.

15 Subcount (5) "Padding of the bill"

16 To a large extent, Complainants' allegations regarding "padding [of] the bill" are resolved
17 through Subcounts (1) through (4) above. Complainants have also raised an issue that has not been
18 addressed, however—the issue of whether curtailment fines collected pursuant to Decision No. 67821
19 were used to offset water augmentation costs as required by that Decision. In his direct testimony,
20 Mr. Gehring asserts that Mr. Hardcastle "has never disclosed where the funds were spent from
21 Curtailment Fees that are designated to offset hauling costs for any year they have been collected."
22 (Ex. C-11 at 7.) Complainants also provide some compliance reports filed by Payson as required by
23 Decision No. 67821, specifically for April 2010, April 2011, and September 2011. (Ex. C-2 at 37-
24 39.) During the hearing in the Smith Docket, Mr. Smith asked Mr. Carlson whether he knew of a
25 requirement imposed on Payson or Brooke in Decision No. 67821 for curtailment tariff fines to be
26 placed into an interest bearing trust account and used to offset hauling costs. (See Smith Tr. at 216-
27 18.) Mr. Carlson did not have knowledge of such a requirement. (See *id.*) Aside from the
28 information cited here, Decision No. 67821 does not appear to have been addressed in testimony or

other evidence in either this matter or the Smith Docket.

A review of filings in the Curtailment Docket shows that since Decision No. 67821 was issued, Payson has made report filings for October 2005, May and October 2006, May and October 2007, May and October 2008, May and October 2009, May and October 2010, May and October 2011, May and October 2012, October 2013, and May 2014.⁵⁹ The reports show that the Curtailment Account has had the following activity:⁶⁰

Reporting Period	Name/s	Fines Paid	Fines Spent on Importation	Account Balance
2009	Gehring	\$100 ⁶¹	\$100	\$0
	Dillon	\$50	\$50	\$0
2010	Gehring	\$600	\$600	\$0
	Dillon	\$50	\$50	\$0
2011 ⁶²	Paul	\$200	\$0	\$1,000 ⁶³
	Martin	\$200	\$0	\$1,200
	Frausto	\$200	\$0	\$1,400
	Fleishaker	\$200	\$0	\$1,600
	Egberty	\$200	\$0	\$1,800
	Morris	\$200	\$0	\$2,000
	Halsey	\$200	\$0	\$2,200
	Romero	\$200	\$0	\$2,400
2012	Paul	\$200	\$200	\$0
	Martin	\$200	\$200	\$0
	Frausto	\$200	\$200	\$0
	Fleishaker	\$200	\$200	\$0
	Egberty	\$200	\$200	\$0
	Morris	\$200	\$200	\$0
	Halsey	\$200	\$200	\$0
	Romero	\$200	\$200	\$0

The reports do not show the date that each reconnection fee was paid, making it impossible to determine definitively to what extent, if at all, reports from one year to the next are actually

⁵⁹ Official notice is taken of the compliance filings made in the Curtailment Docket. Not all of these reports were made on a timely basis.

⁶⁰ Reports that had no activity are not reflected. Mr. Gehring was assessed a total of \$700 in reconnection fees in 2009 and 2010.

⁶¹ The Curtailment Tariff had a minimum reconnection fee of \$150. Thus, it is unclear why these amounts were assessed.

⁶² We note that Mr. Smith's reconnection fee, which was voided, was not reported here.

⁶³ This figure only makes sense if the total of \$800 reported as spent on importation in 2009 and 2010 was not actually spent on importation at that time.

1 cumulative, something that we conclude is the case for the 2011 and 2012 reports.⁶⁴ Assuming that
 2 the 2011 and 2012 reports are cumulative, which is the most likely conclusion from the identical
 3 customers and fines listed for each year, they show that the account reached a high of \$2,400 and that
 4 \$2,400 was spent on importation of water at some time before the end of 2012. The lack of dates for
 5 any account-related activities make it impossible to determine precisely when that occurred.
 6 Additionally, it must be noted that importing water could reasonably be interpreted to mean
 7 something broader than water augmentation as authorized in Decision No. 71902, which is
 8 specifically referred to as water hauling.

9 It is true that the WAS calculations in evidence do not reflect any deduction for these funds.
 10 Without information concerning the date when the fines were paid and funds were deposited and
 11 withdrawn from the account, however, we cannot conclude that the funds were not used for
 12 importation of water as required by Decision No. 67821. Complainants had the burden of proving
 13 that the funds were not used as required, and they have failed to present evidence sufficient to meet
 14 that burden.

15 Subcount (5) is not substantiated.

16 5. Remedy

17 In the Smith Docket, we concluded that MDC customers had been overcharged because they
 18 paid all of the travel time charges for those four occasions in 2011 on which both MDC and EVP
 19 received water hauling. We also required Payson to reimburse MDC customers through bill credits
 20 for the amount of the overcharge, with interest from July 22, 2011, to December 1, 2015, and
 21 established the manner in which each customer's credit is to be calculated. In light of the conclusion
 22 and resolution reached in the Smith Docket, which will make MDC customers whole for the
 23 overcharges, we do not adopt any further remedy herein.

24 ...

25 ⁶⁴ The May 2012 report shows the reconnection fees collecting up to a balance of \$1,600 in the account. The October
 26 2012 report lists all of the same customers and reconnection fees, but shows that each reconnection fee paid was used for
 27 importation costs. We conclude that the reconnection fees shown in each 2012 report are the same, as each customer
 28 would have been assessed an escalated reconnection fees for more than a single violation within a calendar year. (See
 Decision No. 71902 at ex. A.) In addition, because we do not believe that only the exact same customers would have
 been assessed the exact same amounts two years in a row, we conclude that the 2012 reconnection fees are the same as
 the 2011 reconnection fees.

1 **Count D**

2 1. **The Allegations**

3 Complainants allege that Payson misapplied the revised Curtailment Tariff, failed to mail out
4 its May 2011 statements and then shut off customer meters for alleged nonpayment, and
5 unnecessarily harassed customers for their daily usage.⁶⁵ Specifically, Complainants allege that
6 Payson (1) failed to mail out May 2011 statements and had them thrown away instead; (2)
7 disconnected customers for alleged over-usage even when their usage was below 133.33 gallons per
8 day (which is equivalent to 4,000 gallons per month); and (3) selected days that customers would
9 likely water outside as mandatory MDC water conservation days, in order to harass, threaten, and
10 intimidate customers and to extort additional revenues. (*See* Complaint at 7-8.) We will treat each of
11 these numbered items as a subcount.

12 2. **The Evidence**

13 In the Complaint, Complainants supported their allegation regarding the May 2011 statements
14 through the September 12, 2011, affidavit of Ellen Kitchen, who identified herself as an employee of
15 the U.S. Postal Service at the Payson Post Office during the period of May 14 to 23, 2011. (*See*
16 Complaint at ex. F.) Ms. Kitchen stated that during this time, Mike Conklin of Post Net twice
17 brought Brooke bills to the post office for mailing, something that he did routinely one or two times a
18 week. (*Id.*) Ms. Kitchen stated that on the first occasion during that period, after Mr. Conklin was
19 told that there was no money in the account to pay postage for the bills, Mr. Conklin contacted
20 Brooke, money was added to the account, and the bills were mailed. (*See id.*) Ms. Kitchen stated
21 that on the second occasion during that period, when Mr. Conklin was again told that there was no
22 money in the account, "Mike again called Brooke Utilities and was told that they were going a
23 different route and to throw those bills away." (*Id.*) No affidavit from Mr. Conklin was provided to
24 corroborate this account, and neither Ms. Kitchen nor Mr. Conklin was called as a witness in this
25 matter or the Smith Docket.

26 ⁶⁵ In a tangentially related comment, Complainants also asserted that no due process mailers were sent certified mail to
27 notice customers and Complainants of the Commission's hearings on the rate increase and curtailment plan changes after
28 September 2010. (*See* Complaint at 8.) We note that Decision No. 71902 required notice to be made by mail, not by
certified mail. (*See* Decision No. 71902 at 14.) We further note that the issue of notice was addressed fully in the Smith
Docket Decision, which concluded that sufficient notice was provided in the WAS Docket.

1 Mr. Gehring, Mr. and Mrs. Jones, and Mr. Smith all indicated that they did not receive their
 2 May 2011 statements in a timely fashion but instead in early July, mid-August, and mid-June,
 3 respectively. (See Ex. C-11 at 1; Ex. C-12 at 2; Smith Ex. C-2 at 3, ex. F.) Mr. Gehring and Mr. and
 4 Mrs. Jones further stated that the May 2011 statements were received only after requests had been
 5 made to Payson. (See Ex. C-11 at 1; Ex. C-12 at 2.)

6 As is shown in the billing activity tables above, neither Complainants' nor Mr. Smith's
 7 accounts were charged a late fee on the billing statement dated June 22, 2011. (See Complaint at ex.
 8 A at 1-12; Smith Ex. C-2 at ex. G.) Of the three accounts, only that for Mr. Smith's home was
 9 charged a reconnection fee on the June 22, 2011, bill, in the amount of \$200. (See Smith Ex. C-2 at
 10 ex. G.) This \$200 reconnection fee was charged for violation of the Curtailment Tariff and had
 11 nothing whatsoever to do with late payment of the May 2011 billing statement. (See Smith Ex. C-2
 12 at ex. A.)

13 Payson provided a list showing that only four MDC customers were disconnected for past due
 14 payments on May 25, 2011, and that each was assessed a charge of approximately \$20.00. (See Ex.
 15 R-6.) The list also shows that five additional MDC customers paid before they were disconnected.
 16 (*Id.*) Payson served an average of 367 MDC customer connections in 2011. (Ex. S-3.)

17 The only specific evidence presented on the issue of disconnection for over-usage, in spite of
 18 usage below 133.33 gallons per day, concerns the account serving Mr. Smith's home, which had its
 19 service disconnected on June 8, 2011, for failure to observe the water conservation requirements of
 20 the Curtailment Tariff. (See Smith Ex. C-2 at ex. A.) The Warning Notice of Disconnection for
 21 Stage 3 ("Warning Notice") for Mr. Smith's home, dated June 7, 2011, shows a meter read of
 22 263,690 for that day and a meter read of 263,560 for the prior day, daily use of 130 gallons,
 23 maximum daily use of 97 gallons, a required usage reduction of 33 gallons, and a disconnection date
 24 of June 8, 2011.⁶⁶

25
 26 ⁶⁶ Under the Curtailment Tariff, this daily usage level would represent monthly water consumption of 3,900 gallons and
 27 would be a violation if it did not represent at least a 30-percent reduction in use from the higher of the prior month's
 28 consumption or the consumption in the same month in either of the prior two years. (See Smith Ex. C-2 at ex. C.) Mr.
 Smith has not asserted that the exemption for households using less than 4,000 per month applies to his household, and
 the table above showing usage for March 16, 2011, through July 16, 2011, suggests that his household would not be
 eligible.

Documentation⁶⁷ provided by Mr. Smith shows the following billing-related activity for his home's account:

Billing Statement Date	April 22, 2011	May 20, 2011 ⁶⁸	June 22, 2011	July 22, 2011
Usage Period	March 16, 2011-April 16, 2011	April 16, 2011-May 16, 2011	May 16, 2011-June 16, 2011 ⁶⁹	June 16, 2011-July 16, 2011
Starting Meter Read	254,740	259,280	267,340	264,090
Ending Meter Read	259,280	267,340	264,090	269,060
Usage (Gallons)	4,540	8,060	-3,250	4,970
Previous Balance	\$48.77	\$27.29	\$66.34	\$24.40
Payments	\$48.77	n/a	\$252.39	n/a
Late Fee	n/a	\$0.41	n/a	\$0.37
Reconnection Fee	n/a	n/a	\$200.00	n/a
WAS	n/a	n/a	n/a	\$67.59
Credits	n/a	n/a	\$6.29	n/a
Total Amount Due	\$27.29	\$66.34 ⁷⁰	\$24.40	\$126.17
Due Date	May 7, 2011	June 4, 2011	July 7, 2011	August 6, 2011
Paid Date	May 17, 2011 ⁷¹	June 10, 2011	Not provided	July 29, 2011

The Curtailment Tariff provides the following regarding customers who use 4,000 gallons or less per month:

EXEMPTIONS: Customers who use 4,000 gallons or less per month based on a twelve (12) month rolling average are exempt from the mandatory reduction in daily use requirements as outlined in Stage 3, Stage 4 and Stage 5 of this Tariff. This is because these customers are already leading a conservative water lifestyle, and mandatory percentage reductions will likely require the loss of use of water essential to health and safety. However, all other restrictions during mandatory conservation periods will still apply.⁷²

The Curtailment Tariff defines daily use as follows:

For the purpose of calculating "daily use" under the Restriction section of Stage 2, Stage 3, Stage 4, and Stage 5 water conservation conditions, the following definition shall apply:

Daily use is determined by taking the customer water meter reading today

⁶⁷ See Smith Ex. C-2 at ex. A, ex. F, ex. G, appendix B.

⁶⁸ Mr. Smith reports that this billing statement was not received until June 16, 2011. See, e.g., Smith Ex. C-2 at 3.

⁶⁹ This period includes the almost seven-day disconnection period.

⁷⁰ This billing statement broke service into more line items than usual (i.e., two lines for service charge and four lines for commodity charge), but the total amounts billed are consistent with the rates and charges effective at the time.

⁷¹ This payment was past due.

⁷² See Decision No. 71902 at ex. A at 1.

and subtracting from the customer's meter reading yesterday. This daily use amount is multiplied by 30 days to obtain a calculated monthly use. This monthly use is then compared to the higher of; (a) the immediately preceding month's actual water consumption, or (b) water consumption for the same month in any one of the two previous years for the same service location, to determine if the customer reduced his/her water consumption by at least the required Stage's percentage. The water customer should reduce their daily water consumption from the higher monthly water consumption of either (a) or (b).

Example: Customer meter reads 986654 today. Customer meter read 986354 yesterday. The difference in meter reads is 300 gallons for one day or 9000 gallons for 30 days. Customer actual use in the immediately preceding month was 7,000 (a) gallons. Customer's actual use in the same month in any one of the two previous years was 6,000 (b) gallons. Customer is in violation of Stage 3 mandatory water conservation conditions because his/her current "daily use" calculation is greater than his/her higher monthly use of (a) 7,000 gallons. Under Stage 3, the customer is required to reduce consumption by 30% of the 7000 gallons or 2,100 gallons, 7,000 - 2,100 is 4,900. So the customers daily use needs to be about 165 gallons per day.⁷³

The Curtailment Tariff sets out the following storage level percentage thresholds and other criteria for the Stages created therein and the following water augmentation requirements for each Stage:⁷⁴

Stage	Criteria	Augmentation
Stage 1	(a) $\geq 85\%$ and (b) No known problems with production or storage	No augmentation required
Stage 2	(a) $< 85\%$ and $> 70\%$ for at least 48 consecutive hours and (b) Operational circumstances create reasonable belief that system will be unable to meet anticipated sustained water demand	No augmentation required
Stage 3	(a) $< 70\%$ and $> 60\%$ for at least 24 consecutive hours and (b) Operational circumstances create reasonable belief that system will be unable to meet anticipated sustained water demand	Company must take reasonable measures to augment well production until Stage 2 conditions are achieved for 48 consecutive hours
Stage 4	(a) $< 60\%$ and $> 50\%$ for at least 24 consecutive hours and	Company must take reasonable measures to

⁷³ See Decision No. 71902 at ex. A at 8.

⁷⁴ See Decision No. 71902 at ex. A.

	(b) Operational circumstances create reasonable belief that system will be unable to meet anticipated sustained water demand	augment well production until Stage 3 conditions are achieved for 48 consecutive hours
Stage 5	(a) <50% for at least 12 consecutive hours and (b) Operational circumstances create a reasonable belief that the system will be unable to meet anticipated sustained water demand	Company must take reasonable measures to augment well production until Stage 4 conditions are achieved for 48 consecutive hours

The Curtailment Tariff does not prohibit water augmentation during Stage 1 or 2, although the WAS tariff would not apply to allow recovery for water augmentation during Stage 1 or 2. (*See* Decision No. 71902 at ex. A.)

In the Smith Docket, Mr. Smith provided a chart showing for each date from May 1 through September 30, 2011, the reported Stage for MDC; the reported storage level as a percentage; what appears to be the corresponding Stage under the Curtailment Tariff;⁷⁵ and, for some dates, a statement apparently indicating action to be taken. (*See* Smith Tr. at 93-96; Smith Ex. C-9 at 23-24.) Mr. Smith indicated that the chart was a document that had been submitted to Staff by Payson/Brooke. (*See* Smith Ex. C-9 at 23-24; Smith Tr. at 93.) The chart is attached hereto and incorporated herein as Exhibit 4.

There is testimony from Mr. Hardcastle indicating discomfort with and a desire to get away from both water augmentation and the Curtailment Tariff:

Payson Water Company's long-term plans for Mesa del Caballo is try to get out of water augmentation and the water curtailment process completely as fast as we can. Nobody likes it. We don't like it. This proceeding is a good example. We wind up being cops. We don't like to be cops. That's not the business we are in. It is a necessary and unfortunate part of this business. But we would like to be out of the water augmentation business.⁷⁶

Mr. Smith also provided copies of a number of emails including the notices that Payson was required to provide under the Curtailment Tariff, which would have presented a regular administrative burden

⁷⁵ This is difficult to establish without a time element added to the percentage, as the criteria for each of the Stages has a time element component.

⁷⁶ Tr. at 419-20.

necessary only due to the Curtailment Tariff. (*See* Smith Ex. C-4 at 54-80.) Some of the emails sent to MDC customers, particularly those on August 10 and 11, 2011, read as pleas for MDC customers to use less water and warnings of the probable consequences if they do not reduce use.⁷⁷ (*See* Smith Ex. C-4 at 55-80.)

3. Relevant Commission Rules

A.A.C. R14-2-409(A)(1) requires a utility to bill monthly for services rendered and to schedule meter readings to occur every 25 to 35 days. A.A.C. R14-2-409(D)(3) provides that the failure of a customer to receive a bill or notice that was properly placed in the U.S. Mail shall not prevent the bill from becoming delinquent or relieve the customer of the obligations of the bill. A.A.C. R14-2-409(C)(1) provides: "All bills for utility service are due and payable when rendered. Any payment not received within 15 days from the date the bill was rendered shall be considered delinquent." A.A.C. R14-2-409(C)(2) provides that the date a bill is rendered can be established by either the postmark date or the mailing date shown for certified mail or a certificate of mailing.

A.A.C. R14-2-407(A) provides: "Each utility shall be responsible for providing potable water to the customer's point of delivery." A.A.C. R14-2-407(C) provides: "Each utility shall make reasonable efforts to supply a satisfactory and continuous level of service."

4. Resolution

Subcount (1) Failure to Mail Out May 2011 Statements

Mr. Gehring, Mr. and Mrs. Jones, and Mr. Smith all assert that they did not receive their May 2011 billing statements in a timely fashion. Mr. Gehring and the Smiths further assert that they did not receive their May 2011 statements until they expressly requested them. Ms. Kitchen's affidavit asserts that Mr. Conklin was directed by Brooke to throw the May 2011 statements in the trash, but does not state that Ms. Kitchen observed Mr. Conklin throwing the bills away; that Ms. Kitchen was included in the communications occurring between Mr. Conklin and Brooke/Payson; or that the bills

⁷⁷ On August 10 at 0620 hours, Payson sent an email that said "PLEASE AVOID WATER HAULING COSTS by conserving water. No one likes to haul water and pay for it. You CAN IMMEDIATELY EFFECT your costs by avoiding more water hauling costs." (Smith Ex. C-4 at 71.) Likewise, at 1525 hours on August 10, 2011, Payson's email said, *inter alia*, "PLEASE reduce water consumption to avoid ADDITIONAL water augmentation charges related to declining water storage levels." (Smith Ex. C-4 at 72.) Then, at 0730 hours on August 11, 2011, Payson's email said: "Water storage levels declined further overnight. We are very near being required to haul water again. PLEASE avoid this condition and costs by conserving all the water possible." (Smith Ex. C-4 at 73.)

1 in question were for Payson or specifically for MDC. Furthermore, because neither Ms. Kitchen nor
2 Mr. Conklin was called to testify in this matter, neither Payson nor Staff had an opportunity to cross-
3 examine Ms. Kitchen or to ask Mr. Conklin about the accuracy of Ms. Kitchen's affidavit. Nor did
4 the Administrative Law Judge have an opportunity to assess Ms. Kitchen's credibility.

5 The fact that only four MDC customers were disconnected for past due payments on May 25,
6 2011,⁷⁸ and that only an additional five customers apparently were significantly late in their
7 payments, suggests that most of the approximately 367 MDC customers received their May 2011
8 bills. If none of them, or a sizable portion of them, had not received their bills, it seems likely that
9 there would have been more than nine customers either disconnected or included on the list of
10 customers who paid prior to disconnection for the month. Complainants have not established, by a
11 preponderance of the evidence, that Payson failed to mail May 2011 bills to some or all of its MDC
12 customers.

13 Subcount (1) is not substantiated.

14 Subcount (2) Disconnection when Usage Below 133.33 Gallons per Day

15 Complainants seem to believe that the Curtailment Tariff's exception means that a customer
16 who has water usage that is below 4,000 gallons in any month, or that is below the daily equivalent of
17 133.33 gallons on any day, is not required to curtail usage during Stages 3 through 5. This belief is
18 not consistent with the Curtailment Tariff exception, quoted above, which requires that exemption
19 eligibility be determined using a 12-month rolling average. Complainants have not alleged or
20 established that any customer with water usage below 4,000 gallons per month according to the
21 Curtailment Tariff has been required to comply with daily usage requirements under Stages 3 through
22 5. As is shown above, Mr. Smith's household usage did not appear to make his household eligible
23 for the Curtailment Tariff exemption when his water was disconnected for noncompliance with the
24 mandatory daily usage reductions. Complainants have not met their burden of proof.

25 Subcount (2) is not substantiated.

26 Subcount (3) Selection of Water Conservation Days to Harass and Extort Revenue

27 _____
28 ⁷⁸ While Mr. Smith's home was disconnected for a period in June 2011, the disconnection was not associated with nonpayment of a bill, but with violation of the Curtailment Tariff.

1 The chart in Exhibit 4 shows the reported daily Stages for the period from May 1 through
 2 September 30, 2011. Because Exhibit 3 shows only one storage level percentage for each day, and
 3 there is no indication whether the percentage level shown was the low for the day, at what time it was
 4 taken, or for how long it lasted, it is not possible to determine definitively whether the percentage
 5 shown dictates the appropriate Stage for the day. This is particularly true when the day before and
 6 the day after show significantly different percentage levels. This uncertainty highlights the
 7 complexity of applying the Curtailment Tariff, which requires a percentage level, a minimum
 8 duration for that percentage level, and a subjective operational judgment to determine the appropriate
 9 Stage. (See Decision No. 71902 at ex. A.) Additionally, it reveals the flaws in the Curtailment Tariff
 10 Stage criteria—many scenarios are possible under which the day's circumstances would not fall
 11 neatly within the criteria for any Stage.⁷⁹ This increases the difficulty of determining whether it was
 12 necessary, or simply reasonable, for Payson to decide to haul water on any particular date.

13 Exhibit 3 shows that, with the exceptions of July 3 and September 5 and 28, each incidence of
 14 hauling⁸⁰ was preceded by or started on a day when storage levels were reported at below 70 percent,
 15 the threshold for Stage 3 and mandatory water augmentation.⁸¹ (See Exhibit 3.) For July 3 and
 16 September 5 and 28, the chart shows that for either the date of hauling or the preceding date, the
 17 reported storage levels were at 72 or 74 percent. It is also noteworthy that July 3 and September 5
 18 both fell within long holiday weekends, when it would be reasonable to expect for greater water
 19 usage at a residence.⁸² These factors all support a determination that Payson applied the Curtailment
 20 Tariff in a reasonable manner.

21 There are also factors that raise questions about the manner in which Payson applied the
 22 Curtailment Tariff. For example, although MDC's reported storage percentage level hovered

23 ⁷⁹ For example, if the storage level on Day 1 at hour 1 is 71, it falls to 65 by Day 1 at hour 12, and it goes back up to 72
 24 by Day 2 at hour 2, that situation would not meet the express Curtailment Tariff criteria for either Stage 3 or Stage 2.
 (See Decision No. 71902 at ex. A at 2-3.)

25 ⁸⁰ We consider a two-day period of hauling to be one incidence. The hauling dates shown on the hauling logs are
 indicated by arrows.

26 ⁸¹ We note that the hauling log corresponding to the August 31 to September 1, 2011, Pearson invoice stated that the
 hauling took place on August 30, 2011, rather than August 31 to September 1, 2011, which makes more sense in light of
 27 the water storage levels shown in Exhibit 3. (See Smith Ex. C-8 at 33.)

28 ⁸² Official notice is taken that July 4, 2011, was Independence Day and a Monday and that September 5, 2011, was
 Labor Day and a Monday. We also note that July 3 and September 5 and 28 are three of the four hauling occurrences
 when water was hauled to both MDC and EVP. (See Exhibit 1.)

1 between 63 and 72 percent and is shown as being at Stage 3 from July 17 through August 4, water
2 hauling was not commenced until August 5, 2011. It is possible that Payson should have hauled
3 earlier during this period. One can also question why water hauling was commenced on September
4 5, when a storage level of 74 percent was reported for September 4. Yet, as noted previously, there is
5 no indication for how long the 74 percent lasted or whether it was even the low point for the day.

6 Complainants have not provided any evidence to indicate which dates people were more
7 likely to water outdoors or that Payson would have been aware of which dates people were more
8 likely to water outdoors, or to suggest that Payson chose to use the Curtailment Tariff as a weapon.
9 Rather, the evidence suggests that Payson was reluctant to use the Curtailment Tariff and attempted
10 to avoid its use and water hauling. This is logical, as Payson's use of the Curtailment Tariff and of
11 water hauling resulted in additional administrative duties and expenses, none of which were
12 reimbursable under the WAS tariff.

13 Subcount 3 is not substantiated.

14 5. Remedy

15 Because Count D is not substantiated, there is no need to consider a remedy related thereto.

16 Count E

17 1. The Allegations

18 Complainants allege that Payson made misrepresentations to the Commission and other
19 regulatory agencies in falsified public records to revise the Curtailment Tariff and secure a WAS
20 tariff by creating an artificial emergency situation. Specifically, Complainants allege that (1) Payson
21 duped the Commission into issuing Decision No. 71902 by making "intentional Misrepresentations . .
22 . to coerce a prescribed decision desired by [Payson/Brooke] and the MDC Water Committee" and
23 detrimental to Complainants and other MDC customers; and (2) the MDC Water Committee
24 knowingly and intentionally misrepresented in the WAS Docket that it represented the majority of
25 MDC customers and that the Curtailment Tariff and WAS Tariff were acceptable, neither of which
26 was true. These will be addressed as subcounts (1) and (2).

27 2. The Evidence

28 To support their assertion that the Commission was duped into believing that there was an

1 emergency situation where there was not one, Complainants provided information to support the
 2 ideas that the MDC system wells actually produced more water than the system needed and that the
 3 MDC system wells could have produced even more water had Payson made some changes.

4 Complainants provided excerpts from Payson's annual reports to the Utilities Division,
 5 specifically those pages listing the wells on the system and their pump yields.⁸³ The 2011 report
 6 excerpt showed that four of the MDC system's seven wells were producing water, with a combined
 7 pump yield of 17.7 gpm; that Payson had purchased 6,900,000 gallons from three other wells,⁸⁴
 8 which produced 10 to 13.3 gpm; and that Payson had purchased 873,850 gallons from the Town.
 9 (See Ex. C-4 at 14.) In contrast, the 2010 report excerpt showed that five out of seven MDC wells
 10 were producing water, with a combined pump yield of 26.4 gpm; that Payson had purchased no water
 11 from three other wells⁸⁵ with a combined pump yield of 16.5 gpm; and that Payson had purchased
 12 378,000 gallons from the Town.⁸⁶ (See Ex. C-4 at 15.) The 2009 report excerpt showed six
 13 productive MDC wells, with a combined pump yield of 39.4 gpm, and that Payson had purchased a
 14 combined total of 10,165,000 gallons from the same three wells shown for 2010. (See Ex. C-4 at 16.)

15 Complainants also provided MDC well production figures obtained from Payson showing
 16 production from each well during each month in 2009, 2010, and 2011. (See Ex. C-1 at ex. A at 3;
 17 Tr. at 70-71.) The 2011 well production figures show regular production for seven wells, with three
 18 additional wells showing no or virtually no water production during the year. (See *id.*) The
 19 production figures show the following total production for May through September of each year:

Dates	May-September 2009	May-September 2010	May-September 2011
Total Production	6,691,840 gallons	6,545,617 gallons	6,106,080 gallons

22 These figures show that production was declining each year.

23 Additionally, Complainants provided documentation related to the location and ownership of
 24

25 ⁸³ Because Complainants provided only a single page from each annual report, the only indication of each report's year
 is a handwritten notation, apparently made by Complainants, and there is no indication of the date that each report was
 prepared. (See Ex. C-4 at 14-19.)

26 ⁸⁴ The wells were identified with numbers 55-588967, 55-560398, and 55-585747. (Ex. C-4 at 14.)

27 ⁸⁵ The wells were identified with numbers 55-588967, 55-560398, and ECC 04030. (Ex. C-4 at 15.)

28 ⁸⁶ Complainants also provided a copy of an August 11, 2010, Arizona Department of Environmental Quality ("ADEQ")
 Inspection Report describing seven wells on the MDC system, six of which were apparently active. (See Ex. C-1 at 29-
 33.)

1 wells, including wells that are under water sharing agreements with Payson. (*See, e.g.*, Ex. C-1 at 10-
 2 14; Ex. C-3.) Complainants also provided evidence that one of the wells listed for Payson's MDC
 3 well production results was not actually a well within MDC's water system for which Payson had a
 4 water sharing agreement. (*See* Tr. at 99-103; Ex. C-4.) Mr. Hardcastle responded that there must
 5 have been errors in listing the well numbers, but that such errors do not change the fact that there are
 6 three water sharing agreements or the location and use of the well for which the wrong number is
 7 listed. (*See* Tr. at 103.)

8 Complainants do not believe that the MDC wells are decreasing in production as much as
 9 Payson reports. (Tr. at 275.) They also assert that Payson had a surplus of water because in some
 10 months well production exceeded total consumption; Complainants suggested that any surplus from
 11 one month would carry over to the next month. (*See, e.g.*, Tr. at 72-75.) During Mr. Gehring's
 12 questioning of Mr. Hardcastle related to this area, the following exchange occurred:

13 Q. . . . [I]n the June-July, June 17th to July 16th period, billing period,
 14 total well production was 1,241,824 gallons. The total consumption was
 1,234,320

15 Now, at this point, you had from the previous month
 16 approximately 685,185 gallons in surplus going into this period. And your
 17 consumption, the difference there was 7,504 gallons of surplus. What I
 am trying to understand here is why would you even be hauling during
 that time period if you had over 600,000 gallons in surplus starting into
 that period?

18 A. There is no relationship to in surplus, and I am not quite sure I
 19 understand what your "in surplus" means, there is no relationship to water
 20 that's in surplus as opposed to the need to haul water. The need to haul
 water is based on water, gallons of water actually in storage. Surplus is
 not water that's held outside of storage. It is not held in a pool or a
 reservoir. It is not, it is not additional, "to be referenced" water.

21 Water hauling in all cases is keyed upon the amount of gallons
 22 actually in storage at the time. I am assuming if we haul water on June 7th
 23 or June 5th, or whatever other date we haul, we haul because the water
 storage levels on those particular days, in consultation with Mr. Allred,
 were at a level that required water storage. I don't know how else to
 answer your question. Water hauling is keyed on water storage, period.

24 Q. Well, my problem with this is if, if the wells are producing
 25 1,309,000 plus gallons, and the consumption is only 624,000 plus gallons,
 26 this surplus went somewhere into the system, or was it hauled out or is it
 leaking out of the system, what?

27 A. I mean, I don't know. If you are looking at an explanation for the
 28 difference, I don't know. I don't know the explanation. It could be a leak.
 It could have had a water main leak, could have been, could have been a
 lot of different things.

1 Q. Okay.

2 A. Could have been a problem with a storage device. It could have
3 been a bypass meter. It could have been a lot of different things. That's
4 the nature of the water business.⁸⁷

5 Staff provided a water use data sheet, dated April 4, 2012, showing monthly breakdown
6 figures supporting that for February 2011 through February 2012, the MDC system sold a total of
7 14,056,532 gallons, pumped a total of 7,352,000 gallons, and purchased a total of 7,466,210 gallons.
8 (Ex. S-3.) The monthly breakdown figures for gallons pumped and purchased did not add up to the
9 gallons sold for the month, something that we attribute to the timing differences discussed previously.
10 In the aggregate, the figures pumped, purchased, and sold are consistent and represent a water loss of
11 approximately 5.14 percent for the period, which is within the Commission's general standard for
12 water loss to be below 10 percent.⁸⁸ (See *id.*) The water use data sheet also shows that only four of
13 seven listed MDC wells are producing, with a combined pump yield of 17.9 gpm. (*Id.*)

14 Mr. Gehring acknowledged that on certain holidays in the summer, such as Memorial Day
15 weekend, MDC expects to go to Stage 4 because there is an influx of people to the area and greater
16 water consumption. (Tr. at 273-74.) Mr. Gehring also acknowledged that before the WAS tariff was
17 effective, Payson had to pay for all water hauled without any recovery and should have had an
18 incentive to produce more water rather than to have it hauled and, further, that Payson does not
19 receive a profit from the WAS, that it is just a pass-through of costs. (Tr. at 275-79.) Mr. Gehring
20 maintains, however, that Payson intentionally spent more money for hauling than was necessary to
21 show the Commission that the costs were greater than they were. (Tr. at 278.) Mr. Gehring also
22 suggested that Payson was having water hauled out of MDC and into EVP or other systems. (Tr. at
23 279-80.)

24 Complainants assert that Payson should deepen certain wells to make them more productive
25 again, as they believe a study has established that there is water available at deeper levels. (Tr. at
26 276.) Mr. Gehring reported in his direct testimony that three new wells had been drilled in MDC and
27 that they each produced between 13 and 20 gpm. (See Ex. C-11 at 3.) At hearing, Mr. Gehring

28 ⁸⁷ Tr. at 75.

⁸⁸ The figures are also consistent with the 2011 Well Production figures provided by Mr. Hardcastle pursuant to subpoena. (See Ex. C-1; Tr. at 71.)

1 reported that a fourth well had been drilled in MDC. (Tr. at 319-20.) Mr. Gehring acknowledged
2 that these gpm numbers were spot production conclusions from the time the well was drilled rather
3 than yield production numbers determined after a standard seven-day pumping test; he did not know
4 the actual sustained yield for any of the wells. (Tr. at 320-21.)

5 Complainants also provided information regarding the use of solenoid valves and pressure
6 reducing valves ("PRVs") to increase source production, the use of air relief valves to prevent air
7 from being forced through service connections and domestic points of use, and hydro-fracking as an
8 alternative to drilling deeper wells. (See Ex. C-1 at 16-26; Tr. at 327.) Mr. Gehring acknowledged
9 that he does not have any experience with hydro-fracking, although he has seen a well hydrofracked
10 on one occasion. (Tr. at 325.) Complainants also elicited from Mr. Allred that Payson has looked
11 into hydro-fracking and determined that it is a "crapshoot at best"; has installed solenoid valves into
12 all the well sites with flip switches on them so that the solenoid switches are open to fill the tanks off
13 of water sharing agreement wells when there is low usage at night; has determined that PRVs should
14 not be installed because they would limit the amount of time that water from the water sharing
15 agreement wells could fill the tanks; and has looped rather than dead end lines on the higher streets.
16 (Tr. at 126-131.) Mr. Allred suggested several times that Mr. Gehring was confused concerning how
17 the solenoid valves functioned within the system. (See Tr. at 393-98.) Mr. Gehring asserted that
18 hydro-fracking had been successful on the MDC system in the past, prior to Brooke's ownership of
19 Payson, but did not call as a witness the individual who had told him this. (See Tr. at 326-29.)

20 In response to Complainants' assertion that the water crisis in MDC was "manufactured," Mr.
21 Hardcastle responded as follows: "I am at a complete loss to understand how one would be
22 motivated to 'manufacture' a water crisis in Mesa del Caballo for the purpose of self gain using only
23 cost reimbursement." (Ex. R-5 at Rej. Test. at 3.)

24 Mr. Allred testified that he has been the operator for Payson for 11 years. (Tr. at 148.) Mr.
25 Allred also denied that he had ever intentionally failed to operate an MDC well when it was needed
26 or that he had been instructed or directed to do so. (See Tr. at 144.) Mr. Allred further stated that
27 although it would be beneficial to rest wells, he "do[es] not have the luxury of resting wells." (Tr. at
28 145.) Additionally, Mr. Allred testified that Payson has 105,000 gallons of water storage for the

1 MDC system, while only 75,000 to 80,000 gallons are required, because it is prudent to have an extra
 2 cushion. (Tr. at 145-46.) Mr. Allred also confirmed that he is the primary person to assess and make
 3 the decisions and recommendations to Mr. Hardcastle regarding the need to haul water, based upon
 4 the storage levels in the MDC tanks, information that is obtained electronically. (Tr. at 146, 149.)
 5 For the secondary criteria, Mr. Allred looks at weather patterns, declining tank levels, tank level
 6 histories, whether it is expected to be a big weekend, and things of that nature. (Tr. at 147.)

7 Mr. Norman testified concerning his participation, as a representative of the MDC Water
 8 Committee, in meetings among Payson, the Salt River Project ("SRP"), and the Town regarding the
 9 Cragin pipeline. (Tr. at 404-05.) Mr. Norman testified that the MDC Water Committee is a
 10 committee of the El Caballo Club and that it never has represented itself as representing every MDC
 11 community member. (Tr. at 405.) Mr. Norman also testified that the MDC Water Committee began
 12 communicating with Payson because of the severe shortages during the summer of 2009, that the
 13 Committee has held 10 or 12 community meetings and "probably dozens, if not hundreds" of
 14 meetings with Payson, particularly Mr. Hardcastle, to explore alternatives to obtain more water for
 15 MDC, including purchasing water from the Town,⁸⁹ deep wells, the Cragin pipeline, and a temporary
 16 pipeline from Payson. (Tr. at 405-07.) Mr. Norman provided the following assessment:

17 In all of those meetings, in particular, Robert Hardcastle has
 18 always expressed concern for the costs of the residents of Mesa del
 19 Caballo. Virtually every time I have met with him, and I am talking
 hundreds of hours, thousands of phone conversations, every time it has
 always been a concern for the cost to the residents of Mesa del Caballo.

20 Is everything perfect out there? Absolutely not. But, you know,
 21 long way of answering, you know, every time it has been very transparent,
 22 Mr. Hardcastle has made it absolutely necessary that the community has a
 voice. Whether everybody agrees that we should be the voice, it is not my
 call.⁹⁰

23 3. Applicable Law

24 Persons providing information to the Commission in regard to a material issue in connection
 25 to an application or any official proceeding are required by law to do so truthfully, even when the
 26 person provides the information in an unsworn form. (See A.R.S. § 13-2704.) If a false

27 ⁸⁹ Payson used to purchase water not from the Town, but from locations approximately 40 miles away. (Tr. at 277-78.)

28 ⁹⁰ Tr. at 407.

1 communication regarding a material issue is made in the form of a sworn statement, the person could
 2 be subjected to prosecution for perjury. (See A.R.S. § 13-2702.) If a false communication of any
 3 kind is made in the form of a sworn statement, the person could be subjected to prosecution for false
 4 swearing. (See A.R.S. § 13-2703.)

5 Commission rules require persons appearing before the Commission or an Administrative
 6 Law Judge to conform their conduct to that expected in Arizona Superior Court and to conduct
 7 themselves in a respectful manner. (See A.A.C. R14-3-103(F)(1), R14-3-109(E).) Failure to do so
 8 could result in penalties. (See A.A.C. R14-3-104(F)(4); A.R.S. § 40-424.)

9 4. Resolution

10 Subcount (1) Misrepresentations to Commission by Payson

11 Complainants have provided no credible evidence to establish that Payson knowingly and
 12 intentionally provided any false or misleading information to the Commission in the WAS Docket.
 13 At best, Complainants have uncovered what appear to be clerical errors in the recording of a well
 14 number and have highlighted the discrepancies that result due to the timing differences between
 15 Payson's billing schedule, the Town's billing schedule, and the calendar month.

16 Subcount (1) is not substantiated.

17 Subcount (2) Misrepresentations to Commission by MDC Water Committee

18 The MDC Water Committee is not a public service corporation regulated by the Commission
 19 and is not the Respondent in this matter. Complainants have not established that the MDC Water
 20 Committee is an alter ego of Payson, Brooke, or JW and, thus, cannot attribute any conduct of the
 21 MDC Water Committee to any of them. Complainants do not appropriately pursue their grievance
 22 against the MDC Water Committee in this matter.

23 Subcount (2) is not proper for consideration.

24 5. Remedy

25 Because neither subcount is substantiated, it is not necessary to consider a remedy for Count
 26 E.

27 Count F

28 1. The Allegations

Complainants allege that information publicly disclosed by Payson at the July 21 and August 4, 2011, public meetings at the 1st Church of the Nazarene was misleading and false. Specifically, Complainants allege that at the public meetings, Payson provided slides, graphs, and documentation associated with water consumption and costs of water hauling and made the following representations that were “false and intentionally misleading weighing the results”:

- a. According to ACC Decision No. 71902 the Customer can only be charged for the cost of the water and the hauling of that water. The rate charged to the customer is \$0.01365 per gallon of hauled water or \$13.65 per 1000 gallon hauled. No representation was made that all of the water used/consumed would be charged at a 3rd Commodity Rate of \$13.65/1,000 gallons and Taxed a 2nd or 3rd time.;[sic]
- b. That the Customer is only to be billed for the cost of water purchased plus the hauling costs on a proportional bases to his use;
- c. That, during the months of June and July 2011 MDC residents allegedly used 1.79 million gallons of water;
- d. That, it cost PWC/BU approximately \$16,600.00 to purchase and haul water to the MDC System during the months of June and July 2011; [and]
- e. On a slide presented to the public on July 21, 2011 Mr. Hardcastle represented that in June 2011 MDC Consumed 1,938,000 gallons[.]⁹¹

2. The Evidence

In the Complaint itself, Complainants provided three slides, identified as slides from the August 4, 2011, public meeting, showing consumption and production, a water and hauling cost analysis, and water hauling costs. (Complaint at ex. D.) The consumption and production slide shows high consumption of 1,938,000 gallons for June 2011 and low consumption of 933,000 gallons for February 2009, along with well production information. (*See id.*) The “Mdc Supplemental Water Cost Analysis-Daily Water Hauling” slide, dated July 26, 2011, shows, *inter alia*, that hauling 86,400 gallons per day would have a total cost per day of \$2,413; a total cost per month of \$72,397; a total cost per month per customer of \$193, assuming 362 customers; a cost per load of \$204; a cost per gallon of \$0.0314; and a cost per 1,000 gallons of \$31.00. (*See id.*) The water hauling costs slide also shows that water hauling would be “[p]aid for by customers based on individual consumption – use more, pay more” and that it would cost “approximately \$.01365/gallon or \$13.65 per 1000

⁹¹ Complaint at 10-11 (citations omitted).

1 gallons (variable 2011).” (*See id.*) The source of the slides as included in the Complaint is unclear.
 2 (*See Tr.* at 335-40.)

3 Payson provided three complete sets of slides described as the MDC community meeting
 4 presentations of July 21, August 4, and August 25, 2011. (*See Ex. R-6.*) All three sets of slides
 5 provide information regarding MDC and its water needs as well as five water supply alternatives:
 6 water conservation, water hauling, USFS pipeline interconnected to the Town, deep well exploration,
 7 and the Cragin pipeline. (*See id.*) The July 21, 2011, slides do not provide cost information, but
 8 show a high consumption of 1,788,000 gallons for MDC (undated), a low consumption of 903,000
 9 gallons for MDC (undated), and well production figures consistent with those on the slide provided in
 10 the Complaint. (*See id.*; Complaint at ex. D.) The July slides also state that a Town “lifestyle” takes
 11 8,640 gallons per month per meter and that MDC requires an additional water supply of 68 gpm
 12 sustainable yield on a going forward basis. (*See Ex. R-6.*)

13 The slides from August 4, 2011, include the same high and low monthly consumption
 14 numbers as included in the July 2011 slides provided by Payson; show that water hauling would
 15 “[c]ost approximately \$.01365/gallon or \$13.65 per 1000 gallons (variable 2011)”; and include the
 16 same “MdC Supplemental Water Cost Analysis-Daily Water Hauling” slide as included in the
 17 Complaint. (*See Ex. R-6.*) Cost information is also provided for three of the other four alternatives
 18 (not conservation). (*See Ex. R-6.*)

19 The slides from the August 25, 2011, community meeting stated that water hauling would
 20 “[c]ost approximately \$.00595484/gallon or \$5.95 per 1000 gallons (August 2011).” (*See Ex. R-6.*)
 21 This presentation also included the following on a “Water Hauling Calculations” slide:

22 Water transportation invoices +
 23 TOP Water supply costs =
 24 Total Water Augmentation Costs
 25 Total Water Augmentation Costs /
 26 Total Period Consumption =
 27 Water Augmentation Cost/Gallon or X 1000
 28 to convert to rate per 1000 gallons
 Water Augmentation Cost/Gallon X
 Customer of Gallons =

Water Augmentation Cost⁹²

Mr. Hardcastle testified as follows regarding the water hauling cost information provided on the "MdC Supplemental Water Cost Analysis-Daily Water Hauling" slide, dated July 26, 2011:

This was a computed hypothetical cost of daily cost of water computed on a regular basis, on a daily, monthly, and annual basis. This has nothing to do with the actual cost of water.

...

Because this was a going forward looking analysis, not based on actual water cost hauling invoices.⁹³

The consumption/production slide provided in the Complaint has different high and low monthly consumption numbers than in the complete sets of slides provided by Payson. (See Complaint at ex. D; Ex. R-6.)

The July 2011 slides provided by Payson encourage MDC customers to become informed, to participate, and to express a preference regarding the alternatives and announce upcoming meetings. (See Ex. R-6.) The July 2011 slides also warn that if a customer doesn't participate, the decision may be made for them, may be unaffordable, and may not be what the customer wants. (See *id.*) The August 4 slides encourage customers to "Participate, participate, participate"; to provide their contact information to the MDC Water Committee before leaving; and to direct questions to an El Caballo Club email address or website. (See *id.*) The August 25 slides include the same directive regarding questions. (See *id.*)

3. Commission Statutes

Under A.R.S. § 40-321(A), when the Commission finds the service of any public service corporation to be unjust, unreasonable, or improper, the Commission shall determine what is just, reasonable, and proper and shall enforce that determination by order or regulation.

Under A.R.S. § 40-202(C), the Commission is expressly authorized to adopt rules to protect the public against deceptive, unfair, and abusive business practices and deceptive or untrue advertising practices.

To date, the Commission has not adopted rules for water utilities that specifically address such business practices or advertising practices. However, if the Commission were to find that a

⁹² Ex. R-6.

⁹³ Tr. at 79-80.

1 water utility had intentionally deceived its customers in order to obtain financial gain, the
 2 Commission could use its authority under A.R.S. § 40-321(A) to determine and enforce what the
 3 Commission determined to be just, reasonable, and proper in relation to such customer deception.

4 4. Resolution

5 Complainants have pointed out an inconsistency as to MDC high and low consumption data
 6 between the slide excerpt that was included in the Complaint and the slides that were provided by
 7 Payson. No evidence has been provided to explain the inconsistency, to establish that the
 8 inconsistency was an intentional deception, or to establish how or why the inconsistency was material
 9 for any reason or caused harm to Complainants or any customers of MDC.

10 Regarding the cost information provided in the slides, both as provided in the excerpt in the
 11 Complaint and as provided by Payson, we conclude that the costs were clearly provided as examples
 12 and not as the established prices to be applied going forward. Indeed, because of the variability in the
 13 amount of water hauled and the amount of water used during any peak month, it would not be
 14 possible to provide anything other than actual costs incurred in the past or estimates based upon
 15 available information. The August 4, 2011, slides expressly stated that the costs shown were
 16 approximate. No evidence has been presented to establish that Payson provided these approximate
 17 costs with an intention of deceiving its customers. Further, we conclude that it would not be
 18 reasonable for a person to have relied upon the approximate costs included in the slides as the
 19 established price going forward.

20 Count F is not substantiated.

21 5. Remedy

22 Because Count F is not substantiated, it is not necessary to consider a remedy therefor.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
 25 Commission finds, concludes, and orders that:

26 **FINDINGS OF FACT**

27 1. Payson is an Arizona public service corporation providing water utility service to eight
 28 independent water systems in Gila County, including both MDC and EVP.

1 2. From 1996 through May 31, 2013, Payson was wholly owned by Brooke and
2 controlled by Mr. Hardcastle.

3 3. Since June 1, 2013, Payson has been owned by JW and managed by Mr. Williamson.

4 4. Brooke and Mr. Hardcastle no longer have any interest in or affiliation with Payson.

5 5. At the times relevant to the Complaint, Mr. Gehring operated the Store, which is
6 located in the MDC service area, and was responsible for the Store's account with Payson.

7 6. At the times relevant to the Complaint, Mr. and Mrs. Jones resided in the MDC
8 service area and had an account with Payson in Mrs. Jones's name.

9 7. On September 28, 2010, in Decision No. 71902, the Commission approved the WAS
10 for MDC as an emergency interim rate increase, with the WAS to be effective from May 1 through
11 September 30 of each following year from the effective date of Decision No. 71902 until permanent
12 rate relief was granted by the Commission, and approved a revised Curtailment Tariff for MDC.

13 8. Complainants filed the Complaint against Payson/Brooke on January 11, 2012.

14 9. The Complaint, which has been organized into Counts and subcounts for ease of
15 reference herein, made the following major allegations, all concerning events that occurred within the
16 period from May 1 through October 30, 2011:

17 Counts A, B, and C: The WAS resulted in unauthorized corporate profits and consumer
18 fraud upon the customers/complainants of MDC because Payson failed to comply with Decision No.
19 71902 and Arizona law; fraudulently billed MDC customers for the WAS; and used a spreadsheet for
20 the July 2011 WAS calculations that was false, fraudulent, and a misrepresentation of material facts
21 and evidence.

22 Count D: Payson misapplied the revised Curtailment Tariff, failed to mail out its May
23 2011 statements and then shut off customer meters for alleged nonpayment, and unnecessarily
24 harassed customers for their daily usage.

25 Count E: Payson made misrepresentations to the Commission and other regulatory
26 agencies in falsified public records to revise the Curtailment Tariff and secure a WAS by creating an
27 artificial emergency situation.

28

1 Count F: Information publicly disclosed by Payson at the July 21 and August 4, 2011,
2 public meetings at the 1st Church of the Nazarene was misleading and false.

3 10. The Complaint asserted that Payson has or may have committed violations of A.R.S.
4 §§ 40-334(A) and (B), 44-1522, and 40-202(K); A.A.C. R14-2-209 et seq.; and Decision No. 71902.

5 11. Complainants sought the relief set forth in Section III of the Discussion portion of this
6 Decision.

7 12. The procedural history for this matter was as described in Section II of the Discussion
8 portion of this Decision.

9 13. An evidentiary hearing for this matter was held before a duly authorized
10 Administrative Law Judge of the Commission on June 26 and 27, 2012.

11 14. The evidentiary record for this matter incorporates the evidentiary record from the
12 Smith Docket.

13 15. Exhibit 1 summarizes, for the period from May 27, 2011, through October 26, 2011,
14 and for both MDC and EVP, the evidence regarding water purchases from the Town, hauling
15 activities by Pearson, and the costs associated with each.

16 16. During the period shown in Exhibit 1, Payson purchased water from the Town for both
17 MDC and EVP.

18 17. Payson obtained the water from the Town through a bulk water hydrant meter that the
19 Town installed upon Payson's request in a location behind a Home Depot located in the Town.

20 18. Payson hired Pearson to haul the water purchased from the Town to MDC and to EVP
21 using tanker trucks.

22 19. Pearson charged for hauling at a rate of \$150 per hour and also charged for travel time
23 between Williams and the Town at a rate of \$600 per hauling period.

24 20. Pearson's hauling logs show actual or approximate meter readings for each load
25 hauled and actual meter readings for the beginning and ending of each hauling period.

26 21. On four separate occasions, as shown in Exhibit 1, Pearson hauled water to both MDC
27 and EVP during the same hauling period.

28 22. Pearson billed Payson/Brooke separately for the MDC and EVP hauling activities.

23. Before Payson was permitted to bill MDC customers for the WAS, Staff reviewed and scrutinized all of the documentation used to calculate the WAS and approved the WAS calculation.

24. As approved in Decision No. 71902, the WAS tariff required Payson to determine the total documented water augmentation costs incurred for a month; to divide that total by the total amount of water sold for the month, obtaining a surcharge amount per thousand gallons; to apply that surcharge amount to each customer's total consumption for the month; and to bill the result as a separate line item on the customer's bill.

25. Subcount (1) of Counts A, B, and C is not substantiated.

26. On the bills that included WAS, Gila County and Arizona state taxes were calculated using a total figure that included the WAS, with the tax rate at 7.6 percent, which was the correct tax rate at the time.

27. In 2011, A.R.S. § 42-5063 did not exclude surcharge proceeds from a utility's tax base (the gross proceeds of sales or gross income that is derived from sales), to which the transaction privilege tax is to be applied.

28. A.A.C. R14-2-409(D)(5) authorizes utilities to collect a proportionate share of any privilege, sales, or use tax from their customers.

29. Subcount (2) of Counts A, B, and C is not substantiated.

30. Payson performed the WAS calculations in a manner substantially consistent with the WAS tariff approval in Decision No. 71902. The method of calculation varied only in that the time periods used to determine the different variables did not match perfectly due to billing period differences.

31. For its July 2011 billing statements, Payson performed the WAS calculations using the Town bill for consumption from May 23 through June 23, 2011; the Person hauling invoices for hauling completed between June 7 and July 3, 2011; and customer water usage data for the period from June 16 through July 16, 2011.

32. It was just and reasonable for Payson to perform the WAS calculations in the manner that it did, due to the differences in billing periods associated with the variables.

33. Subcount (3) of Counts A, B, and C is not substantiated.

1 34. The documents provided to Staff to support Payson's calculation of the WAS for
2 Payson's July 2011 billings, and the larger group of documents used to create Exhibit 1 to this
3 Decision, do not exhibit any discrepancies or signs of alteration consistent with falsification.

4 35. During the four hauling periods when both MDC and EVP received water, Pearson
5 charged MDC a total of \$2,400.00 for travel time and did not charge EVP for travel time.

6 36. Because either MDC or EVP would have been required to pay the full travel time if
7 either had been the only system to receive hauling during a hauling period, the travel time for the four
8 hauling periods when both received hauling should have been divided equally between the two.

9 37. MDC customers were overcharged \$1,200.00 in travel charges.

10 38. Subcount (4) of Counts A, B, and C is substantiated, to the extent that MDC customers
11 were overcharged for travel time in the amount of \$1,200.00. The remainder of Subcount (4) is not
12 substantiated.

13 39. In the Smith Docket, the Commission has required Payson to credit MDC customers
14 in the amount of \$1,422.48, which represents \$1,200.00 plus interest from the July 22, 2011, MDC
15 billing date to December 1, 2015. These credits will make MDC customers whole for the travel time
16 overcharge.

17 40. The original Curtailment Tariff was authorized in Decision No. 68721 for all of
18 Payson's nine water systems, including MDC.

19 41. In Decision No. 68721, Payson was ordered to use any reconnection fees collected
20 under the Curtailment Tariff to pay for importing water, such as by hauling water or connecting to
21 and buying water from another system.

22 42. Payson's compliance filings in the Curtailment Docket indicate that from 2009
23 through 2012, Payson collected a total of \$2,400.00 in reconnection fees under the Curtailment Tariff
24 and spent a total of \$2,400.00 for water importation.

25 43. Although the WAS calculations in evidence do not reflect any deductions for the
26 curtailment fine funds, insufficient evidence has been presented to show that the funds were not used
27 for water importation as reported by Payson and required by Decision No. 68721.

28 44. Subcount (5) of Counts A, B, and C is not substantiated.

1 45. Complainants have provided an affidavit stating that between May 14 and 23, 2011,
2 Brooke directed Mr. Conklin not to send billing statements out and instead to throw them away. The
3 affidavit does not identify the system to which the billing statements pertained and does not report
4 that the affiant observed Mr. Conklin throwing the billing statements away. The affiant did not
5 testify in this matter.

6 46. Mr. Gehring, Mr. and Mrs. Jones, and Mr. Smith have all reported that they did not
7 receive their May 2011 statements in a timely fashion but instead in early July, mid-August, and mid-
8 June, respectively. Mr. Gehring and Mr. and Mrs. Jones have further reported that they did not
9 receive the statements until they requested them from Payson.

10 47. In 2011, Payson's MDC system served an average of 367 customer connections.

11 48. Four MDC customers were disconnected for past due payments on May 25, 2011, and
12 another five MDC customers paid before they were disconnected.

13 49. Complainants have not established, by a preponderance of the evidence, that Payson
14 failed to mail May 2011 billing statements to some or all of its MDC customers.

15 50. Subcount (1) of Count D is not substantiated.

16 51. The Curtailment Tariff exempts from its mandatory daily use reduction requirements
17 for Stages 3 through 5 any customer who uses 4,000 gallons or less per month based on a 12-month
18 rolling average.

19 52. A customer who had water use of 133.33 gallons during a day in Stage 3, Stage 4, or
20 Stage 5 would not be exempted from the Curtailment Tariff's mandatory daily use reduction
21 requirements unless the customer used 4,000 gallons or less per month based on a 12-month rolling
22 average.

23 53. The consumption data provided for Mr. Smith for the period of April through July
24 2011 does not support his eligibility for an exemption from the Curtailment Tariff's mandatory daily
25 use reduction requirements.

26 54. Complainants have not established that any customer with water usage below 4,000
27 gallons per month according to the Curtailment Tariff has been required to comply with daily usage
28 requirements under Stages 3 through 5.

1 55. Subcount (2) of Count D is not substantiated.

2 56. Under the Curtailment Tariff, the appropriate Stage is determined using a storage
3 percentage level, which Payson acquires electronically; a minimum duration for that percentage level;
4 and a subjective operational judgment, for which Mr. Allred considers weather patterns, declining
5 tank levels, tank level histories, whether it is expected to be a big weekend, and things of that nature.
6 This set of criteria is flawed because many scenarios are possible under which the day's
7 circumstances would not fall neatly within the criteria for any Stage.

8 57. Because the storage percentage levels shown in Exhibit 3 do not include times, it is
9 unknown whether the levels shown represent the lows for the dates or for how long they lasted, and it
10 is not possible to determine definitively whether the percentage shown dictates the appropriate Stage
11 for the date.

12 58. With the exceptions of July 3 and September 5 and 28, 2011, each incidence of
13 hauling during the 2011 peak period was preceded by or started on a day when storage levels were
14 reported at below 70 percent, the threshold for Stage 3 and mandatory water augmentation.

15 59. For July 3 and September 5 and 28, 2011, the reported storage levels were at 72 or 74
16 percent. July 3 and September 5, 2011, also fell within long holiday weekends, during which it
17 would be reasonable to expect water use to increase.

18 60. Complainants have not provided any evidence to indicate which dates people were
19 more likely to water outdoors or that Payson would have been aware of which dates people were
20 more likely to water outdoors, or to suggest that Payson chose to use the Curtailment Tariff as a
21 weapon.

22 61. The evidence suggests that Payson was reluctant to use the Curtailment Tariff and
23 attempted to avoid its use and water hauling, and even that it may have been appropriate for Payson
24 to haul water during the period between July 17 and August 4, 2011.

25 62. Subcount (3) of Count D is not substantiated.

26 63. MDC well production figures for May through September in 2009, 2010, and 2011
27 show that overall well production during these peak periods has declined each year.

28 64. Payson's annual reports have not accurately identified at least one of the wells that

1 serves the MDC system.

2 65. Payson has taken measures to increase the productivity of its wells, such as installing
3 solenoid valves into all the well sites with flip switches on them so that the solenoid switches are
4 open to fill the tanks off of water sharing agreement wells when there is low usage at night, and has
5 considered others such as hydro-fracking and the use of PRVs.

6 66. Complainants have provided no credible evidence to establish that Payson knowingly
7 and intentionally provided false or misleading information to the Commission in the WAS Docket.

8 67. Subcount (1) of Count E is not substantiated.

9 68. The MDC Water Committee is not a public service corporation regulated by the
10 Commission; is not a respondent in this matter; and is not an alter ego of Payson, Brooke, or JW.

11 69. It is not appropriate for Complainants to pursue their grievance against the MDC
12 Water Committee in this matter.

13 70. Subcount (2) of Count E is not proper for consideration.

14 71. Payson held public MDC community meetings on July 21 and August 4 and 25, 2011,
15 at which Payson provided slide presentations concerning MDC and its water needs and five water
16 supply alternatives—water conservation, water hauling, USFS pipeline interconnected to the Town,
17 deep well exploration, and the Cragin pipeline.

18 72. The slides presented on August 4 and 25, 2011, provided estimated costs per gallon
19 and thousand gallons for hauling water that were consistent with the actual WAS rates billed on the
20 July 2011 and August 2011 statements.

21 73. The slides presented on August 25, 2011, provided a water hauling calculation that
22 defined total water augmentation costs as water transportation invoices plus Town water supply costs;
23 required that the total water augmentation costs be divided by the total period consumption to obtain
24 the water augmentation cost per gallon or (if multiplied by 1,000) per 1,000 gallons; and required that
25 the water augmentation cost per gallon be multiplied by the customer gallons to obtain the water
26 augmentation cost.

27 74. The public meeting slides encouraged MDC customers to become informed, to
28 participate, and to express a preference regarding the alternatives; warned that if a customer did not

1 participate, the results might be unaffordable and not what the customer would want; and encouraged
2 customers to provide their contact information to the MDC Water Committee and to direct questions
3 to an El Caballo Club email address or website.

4 75. Complainants provided a slide, said to be from the August 4, 2011, public meeting,
5 showing high consumption of 1,938,000 gallons for June 2011 and low consumption of 933,000
6 gallons for February 2009. Payson's slides for August 4, 2011, show a high consumption of
7 1,788,000 gallons (undated) and a low consumption of 903,000 gallons (undated). The source of the
8 Complainants' slide is unclear. No evidence has been provided to explain the inconsistency, to
9 establish that the inconsistency was an intentional deception, or to establish how or why the
10 inconsistency was material for any reason or caused harm to Complainants or any customer of MDC.

11 76. The costs provided on the slides were clearly provided as an example and not as the
12 established prices to be applied going forward.

13 77. Count F is not substantiated.

14 78. Because only Subcount (4) of Counts A, B, and C is substantiated, and the remedy for
15 this subcount is fully addressed in the Decision in the Smith Docket, there is no need for the
16 Commission to approve any additional remedy herein.

17 CONCLUSIONS OF LAW

18 1. Payson is a public service corporation pursuant to Article 15 of the Arizona
19 Constitution and A.R.S. Title 40.

20 2. The MDC Water Committee is not a public service corporation pursuant to Article 15
21 of the Arizona Constitution and A.R.S. Title 40 and is not an alter ego of Payson, Brooke, or JW.

22 3. Mr. Gehring and Mr. and Mrs. Jones, as persons, were authorized to make a complaint
23 against Payson under A.R.S. § 40-246.

24 4. The Commission has jurisdiction over Payson and the subject matter of this matter.

25 5. The Commission does not have jurisdiction over the MDC Water Committee.

26 6. Notice of this matter was provided in accordance with the law.

27 7. Regarding the Counts of the Compliant, we conclude as follows:

28 (a) Subcount (1) of Counts A, B, and C is not substantiated;

1 (b) Subcount (2) of Counts A, B, and C is not substantiated;

2 (c) Subcount (3) of Counts A, B, and C is not substantiated;

3 (d) Subcount (4) of Counts A, B, and C is substantiated, to the extent that MDC
4 customers were charged for 100 percent of the travel time on the four occasions when hauling to EVP
5 also occurred, and the remainder of Subcount 4 is not substantiated;

6 (e) Subcount (5) of Counts A, B, and C is not substantiated;

7 (f) Subcount (1) of Count D is not substantiated;

8 (g) Subcount (2) of Count D is not substantiated;

9 (h) Subcount (3) of Count D is not substantiated;

10 (i) Subcount (1) of Count E is not substantiated;

11 (j) Subcount (2) of Count E is not proper for consideration; and

12 (k) Count F is not substantiated.

13 8. When the Commission investigation of a complaint finds that a public service
14 corporation has made an excessive or discriminatory charge, the Commission is legally authorized,
15 under A.R.S. § 40-248(A), to require the public service corporation to pay the complainant
16 reparations, with interest at the legal rate from the date of collection.

17 9. The reparations that Payson is ordered to make in the Smith Docket are just and
18 reasonable, consistent with Arizona law, and in the public interest.

19 10. Under Article 15, § 19 of the Arizona Constitution and A.R.S. §§ 40-424 and 40-425,
20 the Commission has authority to impose monetary penalties upon a public service corporation for
21 failure to comply with any provision of the Arizona Constitution; A.R.S. Title 40, Chapter 2; or any
22 Commission decision, order, or rule. Under A.R.S. § 40-423(B), such penalties are payable to the
23 State.

24 11. The Commission is not legally authorized to award damages to a complainant.

25 12. The evidentiary record for this matter does not establish that Payson behaved in a
26 fraudulent manner or with any other form of malice.

27 13. It is just and reasonable and in the public interest not to impose penalties upon Payson
28 in this matter.

ORDER

IT IS THEREFORE ORDERED, as to the Complaint filed by J. Stephen Gehring, Bobby Jones, and Lois Jones against Payson Water Co., Inc./Brooke Utilities, Inc. that:

- Subcount (1) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
- Subcount (2) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
- Subcount (3) of Counts A, B, and C is not substantiated and is dismissed with prejudice;
- Subcount (4) of Counts A, B, and C is substantiated, to the extent that MDC customers were charged for 100 percent of the travel time on the four occasions when hauling to EVP also occurred, and the remainder of Subcount 4 is not substantiated and is dismissed with prejudice;
- Subcount (5) of Counts A, B, and C is not substantiated and is dismissed with prejudice;

- Subcount (1) of Count D is not substantiated and is dismissed with prejudice;
- Subcount (2) of Count D is not substantiated and is dismissed with prejudice;
- Subcount (3) of Count D is not substantiated and is dismissed with prejudice;
- Subcount (1) of Count E is not substantiated and is dismissed with prejudice;
- Subcount (2) of Count E is not proper for consideration and is dismissed with prejudice;
- and
- Count F is not substantiated and is dismissed with prejudice.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2015.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: PAYSON WATER CO., INC.

2 DOCKET NO.: W-03514A-12-0008

3

4 J. Stephen Gehring
8157 West Deadeye Road
Payson, AZ 85541

5

6 Bobby and Lois Jones
7325 North Caballero Road
Payson, AZ 85541

7

8 Jason Williamson, President
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9 Denver, CO 80230

10 Robert Hardcastle

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11 Bakersfield, CA 93380

12 Janice Alward, Chief Counsel
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13 ARIZONA CORPORATION COMMISSION
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14 Phoenix, AZ 85007

15 Thomas Broderick, Director
Utilities Division

16 ARIZONA CORPORATION COMMISSION
1200 West Washington Street

17 Phoenix, AZ 85007

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Exhibit 1: Water Purchase and Hauling Information, 12-0008

ON NOISICED

Bill/Invoice Date	Town Meter Reading	Gallons Purchased from Town	Bill from Town	Hauling Log Start Reading	Hauling Log End Reading	Difference (Gallons)	Pearson Hauling Invoice #	Hours Billed	Amount Billed for Hauling	Amount Billed for Travel	Total Amount Billed	System Noted	Hauling Date/s
5/27/11	599,000	0	\$23.82	599100 ¹	665500	66400	8803	11	\$1,650.00	\$600.00	\$2,250.00	MDC	6/7/11-6/8/11
6/13/11				665500	734400	68900	8804	20	\$3,000.00	\$600.00	\$3,600.00	MDC	6/19/11-6/20/11
6/21/11						135300					\$5,850.00		
6/28/11	734,400	135,400	\$863.77										
6/30/11				734400	786000	51600	8807	15	\$2,250.00	\$600.00	\$2,850.00	MDC	6/24/2011
7/14/11				786000	845990	59990	8812	17	\$2,550.00	\$600.00	\$3,150.00	MDC	6/29/11-6/30/11
7/7/11				845900	898000	52100	8808	16	\$2,400.00	\$600.00	\$3,000.00	MDC	7/3/2011
				911100	924000	12900	8808						
						176590							
7/7/11				898000	911100	13100	8809	4	\$600.00	\$0	\$600.00	EVP	Not noted
						189690							
7/14/11							8811 ²		\$1,050.00		\$1,050.00	MDC	6/7/11-6/8/11
											\$10,050.00		
7/27/11	924,100	189,700	\$1,221.59										
8/16/11				924100	990672	66572	8815	18	\$2,700.00	\$600.00	\$3,300.00	MDC	8/4/11-8/5/11
8/16/11				990600 ³	1050500	59900	8816	19	\$2,850.00	\$600.00	\$3,450.00	MDC	8/11/11-8/12/11
				1056500	1062300	5800	8816				\$6,750.00		
						132272							
8/16/11				1050500	1056500	6000	8817	6	\$900.00	\$0	\$900.00	EVP	8/11/11-8/12/11
				1062300	1068300	6000	8817						
						12000							
						144272							
9/14/11 ⁴	1,068,300	144,200	\$921.77										
8/30/11				1068300	1128000	59700	8819	14	\$2,100.00	\$600.00	\$2,700.00	MDC	8/24/11-8/25/11
9/7/11				1128000	1187400	59400	8822	16	\$2,400.00	\$600.00	\$3,000.00	MDC	8/31/11-9/1/11 ⁵
9/7/11				1187400	1217000	29600	8823	13	\$1,950.00	\$600.00	\$2,550.00	MDC	9/5/11
				1241000	1264800	23800	8823				\$8,250.00		

The italicized numbers represent gaps in hauling logs for MDC, which coincide with Pearson Hauling invoices for EVP (shown in bold), but for which hauling logs for EVP were not produced.

- Sources: Smith Ex. C-8 at 5-7, 10-11, 13-14, 16-17, 19-20, 22-23, 25-26, 28, 30-31, 33, 35-37, 39-40; Smith Ex. C-4 at 31-34; Smith Ex. C-11.

Payson Water Co., Inc.

2011 MDC Water Augmentation Worksheet (DRE 1-1, DRE 1-2)

10-Nov-11

	2011				
	May-June	June-July	July-August	August-September	September-October
Pearson invoice 8803		\$2,250.00			
Pearson invoice 8804		\$3,600.00			
Pearson invoice 8807		\$2,850.00			
Pearson invoice 8808		\$3,000.00			
Pearson invoice 8811		\$1,050.00			
Pearson invoice 8812		\$3,150.00			
Pearson invoice 8815			\$3,300.00		
Pearson invoice 8816			\$3,450.00		
Pearson invoice 8819				\$2,700.00	
Pearson invoice 8822				\$3,000.00	
Pearson invoice 8823				\$2,550.00	
Pearson invoice 8825					\$1,950.00
TOP water supply charges	\$0	\$863.77	\$1,221.50	\$855.86	\$0.00
EVP water supply charges	\$0	\$0.00	(\$83.84)	(\$153.60)	\$0.00
Net water supply charges	\$0.00	\$863.77	\$1,137.66	\$702.26	\$1,950.00
Total Water Hauling Costs	\$0.00	\$16,763.77	\$7,887.66	\$8,952.26	\$1,950.00
Total Cost per Gallon	\$0.000000000	\$0.0135813808	\$0.0059548430	\$0.0081922562	\$0.0018231796

EXHIBIT 2

		Revised	SHEET NO.	
Payson Water Co., Inc.		Revised	SHEET NO.	
	Mesa Del Caballo Water System (PWS 04-030)			
	(Name of Service Area)			

WATER AUGMENTATION SURCHARGE

MESA DEL CABALLO WATER SYSTEM (PWS 04-030)

Payson Water Co., Inc. ("Company") is authorized to make monthly adjustments to its rates and charges for water service to recover costs incurred for bulk water purchases and related transportation ("Water Augmentation Surcharge") for service to its Mesa del Caballo water system (PWS 04-030) located in Payson, Gila County, Arizona ("Water System").

The Water Augmentation Surcharge shall be calculated by dividing the total Water Augmentation Costs incurred in a calendar month by the total amount of water sold to its customers for the same period. The resulting rate per 1,000 gallons of water will then be multiplied by the gallons used in the same period for each customer to determine the surcharge amount per 1,000 gallons. The resulting Water Augmentation Surcharge will be charged to Water System customers in the immediately following period as a separate line item on the customer's water bill.

The Commission recognizes that operational decisions regarding water supply management should be left within the discretion of the Company and that deficient water supply conditions sometimes require the Company to concurrently augment its primary water supplies to meet customer demand. The foregoing notwithstanding, the Company shall undertake reasonable efforts to maximize the quantity of water obtained from its groundwater sources as a primary source of supply.

ISSUED:			EFFECTIVE:		
	Month	Day Year		Month	Day Year
			ISSUED BY: Robert T. Hardcastle		
			3101 State Road		
			Bakersfield, CA 93308		
			Decision No.		

DRE-1-10

1-May	3	75/2/stay 3
2-May	3	62/4/go 4
3-May	3	58/4/stay 3
4-May	3	65/3
5-May	3	68/3
6-May	3	75/2/stay3
7-May	3	81/2/stay 3
8-May	3	78/2/stay3
9-May	3	75/2/stay3
10-May	3	82/2/stay3
11-May	2	82/2
12-May	2	78/2
13-May	2	83/2
14-May	2	80/2
15-May	2	83/2
16-May	2	71/3/stay 2
17-May	2	79/2
18-May	2	81/2
19-May	2	85/1/stay 2
20-May	2	87/1/stay 2
21-May	2	90/1/stay2
22-May	2	89/1/stay2
23-May	2	80/2
24-May	2	79/2
25-May	2	79/2
26-May	2	78/2
27-May	3	81/2/stay 3
28-May	3	81/2/stay 3
29-May	3	79/2/stay 3
30-May	3	81/2/stay 3
31-May	3	78/2/stay3
1-Jun	3	79/2/stay 3
2-Jun	3	76/2/stay 3
3-Jun	3	74/2/stay3
4-Jun	3	79/2/stay 3
5-Jun	3	73/3
6-Jun	3	68/3
→ 7-Jun	3	50/5/go 4
→ 8-Jun	3	76/3/go 3
9-Jun	2	90/1/stay2
10-Jun	2	90/1/stay2
11-Jun	2	83/2
12-Jun	2	76/2
13-Jun	2	69/3/ go 3
14-Jun	3	73/3
15-Jun	3	71/3

16-Jun	3	72/3
17-Jun	3	71/3
18-Jun	3	65/3
→ 19-Jun	3	59/4/go4
→ 20-Jun	3	76/2/go 2
21-Jun	2	90/1/stay2
22-Jun	2	73/3/go 3
23-Jun	3	60/4/go 4
→ 24-Jun	3	57/4/go4
25-Jun	4	97/1/go 3
26-Jun	3	82/2
27-Jun	3	72/3
28-Jun	3	71/3
→ 29-Jun	3	61/4
→ 30-Jun	3	85/1
1-Jul	3	91/1
2-Jul	3	78/2 stay 2
→ 3-Jul	3	72/3
4-Jul	3	77/2/stay3
5-Jul	3	76/2/stay3
6-Jul	3	57/4/ go 4
7-Jul	3	53/4/ go 4
8-Jul	3	81/2/ stay 3
9-Jul	3	79/2/stay 3
10-Jul	3	Levelcon down
11-Jul	3	77/2/stay3
12-Jul	3	79/2/stay 3
13-Jul	2	79/2
14-Jul	2	80/2
15-Jul	2	83/2
16-Jul	2	74/2
17-Jul	2	64/3/go3
18-Jul	3	63/3
19-Jul	3	65/3
20-Jul	3	67/3
21-Jul	3	71/3
22-Jul	3	70/3
23-Jul	3	72/3
24-Jul	3	72/3
25-Jul	3	68/3
26-Jul	3	67/3
27-Jul	3	64/3
28-Jul	3	65/3
29-Jul	3	68/3
30-Jul	3	72/3
31-Jul	3	70/3

4th of
July
weekend

DRE 1-10

1-Aug	3	64/3
2-Aug	3	66/3
3-Aug	3	64/3
→ 4-Aug	3	64/3
→ 5-Aug	3	62/4/ notice for 4
6-Aug	3	58/4/go 4
7-Aug	3	91/1/ go 3
8-Aug	3	88/2/go 2
9-Aug	2	77/2
10-Aug	2	63/3/ go 3
→ 11-Aug	3	59/4/ stay 3
→ 12-Aug	3	99/1
13-Aug	3	90/1/stay 3
14-Aug	3	80/2/stay 3
15-Aug	3	75/2/stay 3
16-Aug	3	64/3
17-Aug	3	75/2/stay 3
18-Aug	3	70/3
19-Aug	3	73/3
20-Aug	3	75/2
21-Aug	3	68/3
22-Aug	3	64/3
23-Aug	3	62/3
→ 24-Aug	3	58/4/ stay 3
→ 25-Aug	3	102/1/go 2
26-Aug	2	93/1/stay 2
27-Aug	2	80/2
28-Aug	2	73/3/go 3
29-Aug	3	66/3
→ 30-Aug	3	62/4/go 4
→ 31-Aug	4	101/1/go 3
1-Sep	3	96/1/go to 2
2-Sep	2	85/1/stay 2
3-Sep	2	79/2
4-Sep	3	74/2/stay 3
→ 5-Sep	3	90/1/go 2
6-Sep	3	99/1/go 2
7-Sep	2	91/1/stay 2
8-Sep	2	81/2
9-Sep	2	82/2
10-Sep	2	81/2
11-Sep	2	81/2
12-Sep	2	80/2
13-Sep	2	82/2
14-Sep	2	83/1/stay 2
15-Sep	2	82/2

16-Sep	2	80/2
17-Sep	2	82/2
18-Sep	2	80/2
19-Sep	2	79/2
20-Sep	2	79/2
21-Sep	2	81/2
22-Sep	2	77/2
23-Sep	2	80/2
24-Sep	2	80/2
25-Sep	2	71/3 go 3
26-Sep	3	70/3
27-Sep	3	72/3
→ 28-Sep	3	83/2 go 2
29-Sep	3	94/go 2
30-Sep	2	87/1/ stay 2

Labor
Day
weekend